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Current Topics.

Retirement of Lord Carson.

THE ANNOUNCEMENT that Lord CARSON had tendered his resignation of the high judicial office of Lord of Appeal in Ordinary, which he has held for some years, came as a surprise to the profession. Lord CARSON is not old when compared with many of those who have sat on the same benches in the House of Lords, but his has been a strenuous life in politics and in law, and doubtless he has felt that the time has come for rest. In every way he has had a remarkable career. Called to the Irish Bar in 1877, he filled for a brief period the comparatively humble role of a law reporter, but very soon he leapt into a growing practice, and ere long became Solicitor-General for Ireland. Somewhat later he migrated to the English Bar, where his dominating personality at once made itself felt. As some one has well said, he was "a magnificent advocate. He had a forcible presence, and witnesses trembled before him, dreading the glowing face bent forward upon them, the deep penetrating eyes beneath their overhanging bush of eyebrow, and the long, lean accusing finger." As a cross-examiner of devastating force he had no equal since the days when Lord RUSSELL OF KILLOWEN was at the Bar. In politics, too, he made his influence powerfully felt, particularly in the intensity of his opposition to Home Rule. In 1900 he became Solicitor-General for England, and in 1915 he became head of the Bar as Attorney-General. During the succeeding years and until his appointment as Lord of Appeal he filled various posts in the Government. Few who had seen him at the Bar would have set him down as an emotional personality, yet he has told us himself that the day of his retirement from the Bar and from the House of Commons he regarded as the bitterest day of his life. "I took off my wig," he said, "an old wig, that had been with me in so many difficulties, and I threw it on the table and began to cry. And so I was promoted to the dignity of a peer." As a Lord of Appeal it can hardly be said that he achieved the success that marked his career as an advocate. He was no case lawyer; he rarely delivered elaborate judgments bristling with multitudinous citations from the books, but his pronouncements were marked by common sense and with clearness. His retirement from the judicial scene means the removal of one who has played a great part in the life of the nation, and particularly in the sphere of law.

Powers of State Departments.

THE PROTEST, weighty and dignified, made over a year ago by the present Lord Chancellor against the increasing powers delegated to Government Departments and the consequent ouster of the jurisdiction of the courts, reinforced as it has been by the Lord Chief Justice's indictment of what he aptly calls "the new despotism," has at last produced a practical result in the appointment of a strong committee, to be presided over by the EARL OF DONOUGHMORE, "to consider the powers exercised by or under the direction of (or by persons or bodies appointed specially by) Ministers of the Crown by way of (*a*) delegated legislation, and (*b*) judicial or quasi-judicial decisions, and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law." The subject involved is of grave importance to the whole community, and as the terms of the reference appear to be sufficiently wide to cover the whole ground, we are content to leave the matter till in due time we have the report of the committee. We merely desire to add this, that the fight against the increasing menace of bureaucracy is not prompted by mere professional alarm against the encroachment of the Government Departments on the domain of the courts; it is a protest against disputes being decided in secret and without an adequate, or even any, hearing of the parties. Against this kind of procedure the English people will always protest.

English and Scotch Legal Terminology.

HILL BURTON, the historian of Scotland, who was a member of the Scots Bar, has an amusing chapter in one of his books on the different technical terms employed in English and Scots law to describe the same thing. Not unnaturally he preferred the terms with which he had been familiar throughout his professional life, and so he gave a quiet chuckle at the former practice of English lawyers in treating the relationship of husband and wife under the heading "Baron and Fame," and then he adds: "Coverture we call marriage." But he was candid enough to admit that certain technical expressions familiar in Scots law, were, to say the least, peculiar, and the reverse of being self-explanatory. It is curious to find so many divergencies in the professional terminology of the two countries, even after the lapse of centuries of close contact between them. A fresh instance of this was furnished in the case before Mr. Justice CLAUSON last week, where one of the questions was as to the liability of a party to pay a Scottish Solicitor "expenses" under an agreement. In Scotland, the term "expenses" is used where an English lawyer would employ the word "costs." There is a pleasant legend that a witty Scottish judge of a bygone generation genially said at the end of a hearing, "And now we come to the merits of the case—the question of expenses." In the case before Mr. Justice CLAUSON it became unnecessary to decide whether the particular document containing the word "expenses" fell to be construed by Scots law or by English law, but it obviously sounds a note of warning as to the advisability of clear definition of terms, particularly in documents as to which there is any doubt whether English or Scots law is applicable.

The Cat and the Canary.

HOW HAPPY is the position of the cat and its owner under the English law was well illustrated in a case of cruelty which came before a London court recently. The cat had badly mauled a canary. It was not for the first time, and the owner of the bird, in desperation, had bought an air gun. The next time the marauder appeared he fired at it and wounded it in the fore paw, thus inflicting "unnecessary cruelty" and

laying himself open to a prosecution under the Protection of Animals Act, 1911. Quite a good case of cruelty could have been made out for the canary. Indeed the fair East-Anglian —a crested Norwich its owner ruefully told the court—was so grievously wounded that within an hour it succumbed to shock and injuries. The cat lives yet, happy in the thought that its sufferings have been amply avenged by the imposition of a stiff fine and costs. And for the future its only fear need be that the neighbouring bird fancier may persevere with his gun and become so good a shot that on the next raid it will be killed outright. In such melancholy event, its friends will be hard put to it to show the "unnecessary cruelty." Bad marksmanship can be penalised by a summons for cruelty and, by calling in the "cruelty man," all the thrills of a prosecution can be enjoyed without incurring the expense that ordinarily deters the litigant; but a bull's-eye is as fatal to these proceedings as to the cat. Of course, killing a cat is an offence under the Malicious Damage Act, 1861, s. 41, but this provision is so limited by the cases that it is far more difficult to obtain a conviction under it than is the case when an animal is wounded and the proceedings can be taken for cruelty.

Trial of Election Petitions.

THE PROCEDURE for disposing of election petitions, and the promptitude with which they can now be dealt with, as witness the Plymouth petition last week, are a curious commentary on the protest expressed by Chief Justice COCKBURN, voicing the opinion of the then members of the bench, when the Parliamentary Elections Bill, which eventually became law, was before the House of Commons, against the duty of trying these petitions being placed on the judges. In the Life of Disraeli will be found this curious entry on the subject: "Letter from the Lord Chief Justice of England in the name, and with the unanimous authority, of all the judges, protesting against the Parliamentary Elections Bill as 'an impossibility.' In short the judges have struck." The objection of the bench to the new duties cast upon them was based on the idea that these functions would be inconsistent with the performance of their other duties, and would, in consequence of the peculiar character of the inquiries and the strong feelings excited by them, not improbably involve discredit to their judicial character. The fears then entertained have happily proved to be chimerical. The new procedure introduced by the Act, which substituted a judicial inquiry in place of the old Committee of the House provided by the Grenville Act, which, however, was a vast improvement on the previous method of determining contested elections, namely, by the House itself, which was openly partisan, has worked on the whole with admirable smoothness and to the general satisfaction. We have referred to the promptitude with which these inquiries, which are in these days few in number, can be determined. This is brought out by contrasting the position in the old days. According to the late Mr. PORRITT in his work on "The Unreformed House of Commons," there were in the eighteenth century sometimes as many as sixty or seventy controverted elections cases at the opening of a new Parliament; and although a large part of the first session was occupied with them, some of the petitions went over to the second, occasionally even to the third, session of the Parliament.

Doctors and Dispensing.

WHETHER A medical man should be allowed not only to prescribe for a sick person but also to make up the medicine himself and subsequently sign the death certificate in the event of the patient dying whilst in his care is the startling question asked by the writer of an article which appeared recently in the *Daily Express*. That the question should arouse controversy is not surprising, and judging by the columns of letters (mostly, of course, from doctors and chemists) which have since appeared, it would seem likely that action of some sort will have to be taken. It will probably occasion general surprise to learn that with the exception of some of the cantons of Switzerland, no other country in Europe allows this practice. What Mr. MARSHALL FREEMAN quite rightly points out is, that, whereas the poisons in a dispensing chemist's establishment are required by law to be kept in a special cupboard, and may only be handled by the chemist himself or his qualified assistant, there is no such regulation governing the storage or dispensing of poisons in a doctor's surgery. A medical man may, and it is alleged does, keep poisonous drugs like arsenic and strychnine on the same shelves as other drugs: and he is under no legal obligation to employ a qualified person to dispense them. There is certainly something wanting here, and we imagine that the last has not been heard of the matter.

Diplomatic Privilege.

TO SOME people who have been prosecuted or threatened with prosecution for wasting water during the past dry summer it may not be welcome reading that an American gentleman who happens to be a member of the United States Embassy has been enabled by the plea of diplomatic privilege to secure the withdrawal of a summons against him for using a hose pipe. There can be no doubt, however, that he was within his rights in putting forward this plea, and that the court had no jurisdiction in the matter. Sometimes questions arise whether the person who claims this immunity is entitled to it by reason of his position. Supposing the doorkeeper of the Ruritanian Legation went for a motor ride, and by his negligence caused injuries to another person, could he be sued in the English courts? The answer to this is given in effect by Sir CECIL HURST, K.C., recently the legal adviser to the Foreign Office, and now a judge of the Hague Court of International Justice, in an article in the new issue of the British Year Book of International Law. He says: "When a person is employed on the staff of an embassy or legation and in the course of proceedings before a court of law claims that by virtue of that employment he possesses a diplomatic status and is entitled to the privilege and immunities which flow therefrom, the decision whether or not he does possess that status must lie with someone. With whom does it lie? The decision of the House of Lords (*Engelke* v. *Mussman* [1928] A.C. 433) shows that if the appropriate organ of the executive government intimates to the court that the person in question is recognised by the Crown as possessing a diplomatic status, the statement is conclusive, and in that event the decision on the point is taken out of the hands of the court." In the case cited, the plea of immunity was made by a "consular secretary" of the German Ambassy in London, in a landlord and tenant suit in the King's Bench. The other party wanted to cross-examine him as to his status. To this the Master in Chambers said "No," the Judge in Chambers "Yes," the Court of Appeal by two to one "Yes," and the House of Lords unanimously "No." This decision followed the appearance of the Attorney-General at the hearing before the Court of Appeal to certify that the "consular secretary" had been recognised by the British Government as a member of the Embassy since his appointment.

Counsel or Actor.

ONE IS frequently regaled with a forensic titbit from the United States. The New York correspondent of *The Times* describes counsel for the prosecution in a Carolina murder trial as lying down on the floor of the court to illustrate some of the evidence, kneeling and praying to the jury while he clasped the hand of the widow of the murdered man, and finally handing her her husband's bullet-riddled coat and bidding her take it home. It is good to learn that the trial judge severely rebuked counsel for this exhibition of bad taste. Judges are apt to be cold-hearted persons. It is related that many years ago the late Director of Public Prosecutions, when counsel, was making an impassioned appeal to a jury on the Western Circuit. A farmer was so moved by his eloquence as to cry out,

"Go it, little 'un! go it, little 'un." Followed confusion and ejectment of the noisy admirer. The judge then turned to counsel, who had, of course, been entirely thrown out of his stride, and with quiet brutality said, "Go on, Mr. MATTHEWS, *from the point where you left off.*"

Subsidy Houses.

WHAT IS the present state of the housing problem? According to an exhaustive paper read recently to a well-known building society by one of Manchester's principal estate agents, the saturation point in subsidy houses built for owner-occupation is now being reached, and this is more especially true of the small dwelling costing from £400 to £600. The demand for the less modern pre-war houses had almost vanished, and in fact, many such were unsaleable. The lecturer confessed himself a pessimist on the subject of the slum problem, and pithily summarised in a single sentence the difficulties in the way of speedy solution. "How whole districts were to be demolished and spaced out with dwellings possessing the modern requirements of light and air; how the surplus of the displaced were to be provided with similar spaced dwellings miles from their work, and how it was all to be done without making the rent and transport expenses beyond the means of their intended occupants was beyond his comprehension." The municipalities seemed chiefly interested in building for renting, and Manchester had just obtained power for the erection of another 10,000 houses. In this direction, therefore, the prospect for private enterprise was small. It was, however, explained that latterly there had been a well-marked decline in building costs. The average figures in municipal schemes for the year ending March, 1926-7, were £437 for the non-parlour type and £500 for the parlour type; for the year ending March, 1927-8, the figures were £397 and £462 respectively; and for the year ending March, 1928-9, the figures were £355 and £423. The outcome pointed definitely, in his judgment, to a falling market in house values generally, and subject to that fact being recognised and duly allowed for, he was of opinion that the trend in the direction of a lower and, he hoped, more stable level was desirable.

Unreasonable Refusal to Maintain.

THE EFFECT of s. 1 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, was plainly and explicitly dealt with by Lord MERRIVALE, P., and HILL, J., in the Divorce Division recently (see 73 SOL. J., p. 717), when two maintenance orders were quashed and reference was made to the fact that an apparent misconception on the part of magistrates had arisen as to the true meaning of the section. By the old Act (1895) a wife could not claim relief unless she was able to satisfy the court that she had been caused by her husband's conduct to leave him; but by s. 1 of the 1925 Act an application for a maintenance order by a married woman on the ground of cruelty or neglect to maintain by the husband may be made notwithstanding that the cruelty or neglect complained of has not caused her to leave and live separately and apart from him. In the two cases referred to, maintenance orders had been made against the respective husbands despite the fact that the wives had left the husbands through no fault of the husbands. In each case the President pointed out that under the new statute magistrates must pay much closer attention than in the past to the allegation of "wilful" neglect. In his lordship's view, it was essential, before a husband could be found guilty of wilful breach of his duty to maintain his wife, that there must be a refusal to maintain, which had no explanation reasonable in common sense and good faith as against a husband who was willing to do his duty. Where, on the true facts, the husband is shown to have done his duty to the utmost of his ability, never wilfully to have failed in his duty to discharge his marital obligations, taking them generally as the relations of husband and wife, it was difficult to conceive how a woman could disclaim her own proper obligations to her husband and then complain.

Damages for Slighted Hospitality.

A CASE which may puzzle those familiar with our law is (says *The Liverpool Echo*) reported from Paris. A certain person invited a friend and his family to dinner, and the invitation appears to have been accepted, but, when the hour came, the friend and his family failed to do so. The host, in annoyance, went to a court and claimed damages for the chicken, rice, condiments, and bananas provided (both host and his invitees being coloured persons). The court ruled that such an invitation should either be declined, or, if accepted, the invited party should warn the host if unable to carry out the engagement. No doubt that ruling accords with proper etiquette and good manners, but the problem remains as to what the court had to do with it. One possibility would be that an invitation to dinner constitutes a contract by French law, the consideration of the guest being the meal and of the host his company. If so, the material damages would be the food spoilt—which probably the rice and chicken might be, though one might have supposed that the host ought to have sold the bananas for what they would fetch, upon the principle of the plaintiff's duty to mitigate the damages, as discussed in *British Westinghouse Co.* v. *Underground Electric* [1912] A.C. 673. Possibly also there might be moral or spiritual damage, as in breach of promise. On another supposition, the failure to appear might be regarded as an insult amounting to a tort, or as behaviour calculated to cause a breach of the peace. If the matter rested on contract, the case of *Maddison* v. *Alderson* (1883) 8 A.C., might be regarded as somewhat analogous. The defendant was administrator to an intestate, who, according to the plaintiff, had induced her to act as his housekeeper for many years without reward, by the promise of substantial benefits under his will. The House of Lords, assuming that the plaintiff's tale was true (as found by a jury at the original trial before STEPHEN, J.), decided that there was no contract, and that she had no cause of action. In this case, like that of the host in the French one, the plaintiff had altered her position for the worse upon a representation which was not fulfilled. In our law, and, one would have supposed, any other, there is no contract if neither party to a promise has the slightest intention to make one, and the ordinary invitation to dinner or dance is not intended to give rise to legal proceedings if, through discourtesy or otherwise, it falls through.

Functus Officio.

WHEN HAS a jury concluded its office? When is it, in fact, *functus officio*? This is, in most cases, simply answered by saying: "When it has delivered a verdict." But with country juries especially it is not uncommon, both in criminal and in civil trials, for a verdict to be delivered which requires a certain amount of unravelling. So far, of course, as civil causes are concerned, legal arguments may follow before judgment is delivered, but criminal cases are in a different category. We noticed this week in the daily press the following happening at a provincial assize, the occasion being a trial for manslaughter: "The jury retired, and on returning after twenty minutes said they found prisoner guilty of negligence but not of criminal negligence. The judge said he had told them they would have to find accused guilty of criminal negligence or not guilty. They had to consider whether his conduct was so reckless as to show disregard for the lives of others. The jury again retired, and found prisoner guilty, but wished to recommend him to mercy on account of his youth." A sentence of imprisonment followed. It would be interesting to know what form of words by a jury in returning a verdict constitutes "Guilty" or "Not guilty." Here the judge, a judge of great experience, evidently thought himself justified in not construing the first "verdict" as an acquittal. But within our recent knowledge we remember "We do not think the prosecution have quite made out their case," and similar queer *dicta* being so accepted. We wonder what the learned judge would have said to the famous Dymchurch jury with their "We finds her not guilty, and hopes she won't do it again!"

Criminal Law and Police Court Practice.

PRELIMINARY ENQUIRY AND TRIAL IN ABSENCE OF ACCUSED.—THE Indian Government, finding the course of justice hampered by hunger strikes which reduce the strikers to a physical condition making it impossible for them to take part in judicial proceedings, has introduced a Bill into the Legislative Assembly to empower judges or magistrates to proceed in the absence of the accused, even if he is not represented by counsel, if the judge or magistrate is satisfied that his incapacity to attend court is due to a voluntary act done or a course of conduct pursued by him after arrest. The principle is not entirely without illustration in English law. Depositions may be taken under Russell Gurney's Act where there is no person accused at all, though we know of no instance where this has been done, and these depositions would presumably be evidence later if the guilty person were caught after the deponent died. It has been said that a trial for felony may go on without the presence of the accused if he creates a disturbance in court. A charge of misdemeanour may be tried in the absence of the accused, if he has previously pleaded. In *Orton's Case* (1873) a defendant, tried at bar for perjury, was taken ill in the course of the trial. He was allowed to absent himself from the court until his recovery, and the trial proceeded in his absence. It is difficult to conceive the English law requiring modification in the same sense as that projected in Indian law. Successive remands of a sick hunger striker under s. 20 (1) of the Criminal Justice Administration Act, 1914, would be lawful, and warranted to bring his or her contumacy to an end.

COUNSEL AND "WANTED" PERSONS.—A case in which counsel is reported as saying that he knew the name and address of a man wanted by the police on a criminal charge but declined to help the police, raises two debatable questions of law: firstly, what risk, if any, is run by a person who, knowing another is wanted on a warrant, accused of a crime, ess than felony, conceals his whereabouts? and secondly, what is the position where there is the relationship of counsel or solicitor and client? The case arose in a petty sessional court, when a man was charged with being a suspected person found on enclosed premises at a shop where he was employed.

It was stated by the police that the prisoner was found with another man who could not now be traced.

Counsel for the defence said that he knew this man's name and address. He was his most important witness, but he wished to know first whether it was the intention of the police to arrest the man if he put him into the witness-box.

A detective-sergeant said certainly, as he held a warrant for his arrest.

Counsel then said, according to a newspaper report: "Then I tell you point-blank I am not going to help you. It means that under such a system I am prevented from putting my chief witness into the box."

The officer replied that it was the law; the police had searched, but could not trace the man.

The prisoner was committed for trial.

Counsel seems to have proceeded upon the curious assumption that a man who knows he is wanted by the police would necessarily remain in concealment, and that if he were arrested he could not be used as a witness. Many men, whether guilty or innocent, prefer to surrender themselves and take their trial as soon as they hear of the existence of a warrant for their arrest. And of course many defendants and co-defendants give evidence.

PRESENTATION.

A silver salver has been presented to Mr. G. Washington Fox, solicitor, on his relinquishing the position of Clerk to the Kingston Borough Justices, which he has held for nearly thirty years. Mr. Fox was admitted in 1886.

Residence and the Income Tax Acts

BY E. O. WALFORD, LL.B.

PART I.

I.—AS TO INDIVIDUALS.

PERHAPS one of the most difficult tasks which the practising solicitor encounters is that of advising his client as to the steps to be taken by him—we had almost said to evade; but we will take refuge in the words of LORD MACNAGHTEN—to avoid the incidence of income tax; particularly when the proposed method is that of setting up a home abroad and staying abroad for periods more or less prolonged.

Two very unpleasant blows have been dealt during last year at the theory that short periods spent in this country, as compared with lengthy periods of residence abroad, will entitle the proud possessor of a villa in the South of France to exemption from tax under those schedules which apply only to residents in the United Kingdom. Before considering these recent cases, however, there should be mentioned certain earlier cases which are almost equally enlightening as to the view taken by the courts regarding the meaning of the word "residence" for the purposes of the Income Tax Acts. It would appear that at no time has the Legislature attempted to define the meaning of this word, and since its interpretation and applicability depend, in so great a degree, upon multifarious circumstances and facts considered together, we should hesitate to criticise the coyness of our law-givers in this respect.

In the first place, we must banish from our minds the not unnatural impression that the test is somewhat similar to that in relation to domicile. Note the words of the LORD PRESIDENT in *Cooper* v. *Cadwallader*, 5 Tax Cases 101, "Domicile has no bearing on the question, and when a person has in fact a residence in the United Kingdom he is chargeable as a person residing there, although he may also have a residence or residences out of the United Kingdom."

It follows, as the LORD PRESIDENT expressly says, that, "a person may have more than one residence, if he maintains an establishment at each of them." Possibly the concluding words are a little misleading, as they might be taken to imply that the maintenance of an establishment is a condition precedent to liability on the ground of residence. It is, however, quite clear that residence in an hotel may be "residence" for the purposes of the Income Tax Acts.

Further, it is not essential that there should be any physical residence in the United Kingdom at all. If a person has a residence kept at his disposal, his absence for the whole of the year will not exempt him, *Rogers* v. *Inland Revenue Commissioners* (1879), 1 Tax Cases, 225. *A fortiori*, where a person (although admittedly domiciled abroad) has a shooting box in United Kingdom for a term of years, and resorts to that shooting box for two months in each year, he is liable to income tax as a resident: *Cooper* v. *Cadwallader, supra*; see also *Loewenstein* v. *de Salis*, 10 Tax Cases 424.

So much by way of introduction. We may now turn to the two recent cases above mentioned, which were before the House of Lords last year, both being reported in THE SOLICITORS' JOURNAL, Vol. 72, p. 270.

In the first case, *Levene* v. *Inland Revenue Commissioners* [1928] A.C. 217; 72 SOL. J. 270, the appellant had been assessed to income tax for the years 1921-1925 and claimed to be exempt on the ground that he was not during those years resident in the United Kingdom within the meaning of r. 2 under Sched. "C," nor ordinarily resident within the meaning of s. 46 (1) of the Income Tax Act, 1918. During the years in question he was in the United Kingdom for periods varying from nineteen to twenty-two weeks in each year. The facts put forward by the appellant showed regularity of visits here and substantial ties with this country, but no such ties in France, where the remainder of the periods had been spent by him.

VISCOUNT CAVE, L.C., in the course of his judgment, said: "Just as a man may have two homes—one in London and the other in the country—so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country . . . The above cases are comparatively simple, but more difficult questions arise when the person sought to be charged has no home or establishment in any country, but lives his life in hotels or at the houses of his friends. If such a man spends the whole of the year in hotels in the United Kingdom, then he is held to reside in this country; for it is not necessary for that purpose that he should continue to live in one place in this country, but only that he should reside in the United Kingdom. But probably the most difficult case is that of a wanderer who, having no home in any country, spends a part only of his time in hotels in the United Kingdom and the remaining and greater part of his time in hotels abroad. In such cases the question is one of fact and degree, and must be determined on all the circumstances of the case: *Reid* v. *Inland Revenue Commissioners*, 10 Tax Cases, 673. If, for instance, such a man is a foreigner who has never resided in this country, there may be great difficulty in holding that he is resident here. But if he is a British subject, the Commissioners are entitled to take into account all the facts of the case, including facts such as those which are referred to in the final paragraph above quoted from the case stated in this instance," i.e., the ties of the appellant with this country and his freedom from attachments abroad. Furthermore, he points out that regard must be had, in relation to cases of British subjects, to r. 3 of the General Rules, which extends to all schedules, whereunder British subjects are liable to tax notwithstanding the fact that at the time of assessment they have left the United Kingdom, if they have so left, "for the purposes only of occasional residence abroad." He finds on the facts that the residence abroad which was partly for Mr. LEVENE'S and his wife's health, and "partly in the hope of escaping liability to the English income tax" (as he infers), was absence for a temporary purpose, and further that the Commissioners had sufficient evidence upon these facts to find that he was resident in the United Kingdom.

Turning to the question whether the appellant was "ordinarily resident" in the United Kingdom, VISCOUNT CAVE expressed the view that the term connoted "residence in a place with some degree of continuity and apart from accidental or temporary absences." So understood, he said, the term differed little from the word "residence" as used in the Acts, and he found that in the present case there were facts upon which the Commissioners might find, as they had done, that the appellant was ordinarily resident here.

LORD WARRINGTON'S judgment is less illuminating upon the subject of "residence." He says somewhat vaguely that if the term has any "definite meaning," he would say that it means residence "according to the way in which a man's life is usually ordered." Let those who may find enlightenment in these words congratulate themselves; for the writer confesses that as an example of a definite meaning it appears to him to be lacking in certain material respects.

The case of *The Commissioners of Inland Revenue* v. *Lysaght* [1928] A.C. 234; 72 SOL. J. 270 followed next. Indeed judgment was delivered on the same day. The merits of Mr. LYSAGHT (in the income tax sense) appear to have been much greater, judged solely from the duration of his sojourning in the United Kingdom. During the years under review—1922 to 1925—the respondent, Mr. LYSAGHT, had lived in England for periods varying from 48 days to 101 days in each income tax year, and no doubt felt that this could hardly be regarded as constituting residence. In this view he was supported by a majority of the Court of Appeal, but he, also, met with disaster on appeal by the Commissioners to the House of Lords, where in spite of the dissentient judgment of VISCOUNT CAVE, four of the noble lords who adorn the Woolsack, by their majority judgment, restored the judgment of ROWLATT, J., in favour of the Commissioners, so that the last stage of the unfortunate respondent was worse than the first.

VISCOUNT CAVE was of opinion that *Levene's Case*, *supra*, was to be distinguished on the ground that he was a homeless man living at different hotels in the United Kingdom and abroad, whereas Mr. LYSAGHT had a permanent home in the South of Ireland, coming to England only for business purposes, and he thought that there was no evidence upon which the Commissioners might properly find that the respondent resided in the United Kingdom.

But, said VISCOUNT SUMNER, somewhat poetically, "who in New York would have said of Mr. CADWALLADER (*C. Cooper* v. *Cadwallader*, *supra*), 'His home's in the Highlands; his home is not here!'" And later he says, "One thinks of a man's settled and usual place of abode as his place of residence, but the truth is that in many cases in ordinary speech one residence at a time is the underlying assumption, and, though a man may be the occupier of two houses, he is thought of as only resident in the one he lives in at the time in question. For income tax purposes such meanings are misleading. Residence here may be multiple and manifold. A man is taxed where he resides. I might almost say he resides wherever he is taxed."

LORD BUCKMASTER draws attention to the fact that the determination of residence or non-residence does not depend upon the element of choice, for a man might well be compelled to reside in England entirely against his wishes. Hence the fact that Mr. LYSAGHT was not in England of his own free choice, as was stressed by the Court of Appeal, was not of any real significance. A man may reside in a place which he regards as his own home and yet the ties of business and other conditions may compel him to spend periods of time, more or less regular, in another country with the result that he may properly be said to reside in that country, and, he says, "If residence be once established, 'ordinarily resident' means, in my opinion, no more than that the residence is not casual and uncertain, but that the person held to reside does so in the course of his life."

If ever there was any real doubt upon the matter, it is now definitely settled by the above case that the question whether a man is "resident" or "ordinarily resident" within the meaning of the Income Tax Acts is a question of pure fact and not one of law, or of mixed law and fact. Hence, the finding of the Commissioners cannot be disturbed unless it is shown to rest upon an error of law, and for this purpose the want of evidence upon which the Commissioners might properly find as they have done in any given case is to be regarded as an error of law. It cannot, however, be too strongly emphasised that *the courts will not determine whether the evidence in their view establishes residence;* but will merely decide whether there was sufficient evidence upon which a finding of residence might reasonably be based. In other words, before such a finding can be disturbed the court must satisfy itself, in effect, that there are no materials upon which the Commissioners' finding could properly depend. This factor, in itself, must operate as a powerful deterrent to would-be disputants, and having regard to the very short period in each year during which the respondent in the last-mentioned case was in England, it would seem that a very strong case indeed would have to be set up in order to persuade the court to interfere. Probably the result of these cases will be considerably to restrict the volume of tax appeal cases. But no doubt there will continue to be found optimistic litigants in whose hearts there has been engendered the belief that "the tide must turn." For upon no other ground does it seem possible to comprehend the ceaseless flow of appeals upon the apparently simple question "What is residence?" When we reflect that such appeals have extended over a

period of nearly one hundred years, and that only in a very small percentage of these cases have the Commissioners' findings been negatived, we may well appreciate the words of the poet, POPE, "Hope springs eternal in the human breast!"

It will be appreciated that the above article is confined to a consideration of the term "residence," employed in the Income Tax Acts and the Rules thereunder, and no attempt has been made here to recapitulate the provisions of the Rules under the various schedules, which must be considered carefully according to the source and nature of the income, and with due regard to the question whether the individual concerned is a British subject or a foreigner.

Moreover, it must be borne in mind that non-residents, whether British or not, are subject to a certain extent to English income tax. Generally we may say that all non-residents are liable for income tax upon all profits from (*a*) property in the United Kingdom, and (*b*) professions or trades carried on within the United Kingdom. Rule 6 of the General Rules under the Income Tax Act, 1918, renders non-residents liable for profits from agencies in this country.

(*To be continued.*)

The Bridges Act, 1929.

ALMOST at the end of a thick volume of statutes of the year will be found the Bridges Act, 1929, which has been passed in order to assist in the solution of various problems rendered acute by the great modern development of motor traffic on the highways, in particular the difficulties caused by the private ownership of road bridges, and the inability of most ancient bridges to bear the burdens of modern traffic. The main objects of the Act are set out in its full title which is as follows: "An Act to enable highway authorities and the owners of bridges carrying public carriage roads to make agreements with respect to the maintenance, improvement, reconstruction and transfer of such bridges, and of the approaches thereto and the roads carried thereby; to empower the Minister of Transport, in the absence of any such agreement, to make orders with respect to the matters aforesaid, and for purposes incidental to the making of such agreements and orders." This is a good example of modern departmental legislation; the earlier Bridges Acts do not look beyond local authorities and give no power to any Minister of the Crown.

We owe a great debt, as we are only just beginning to realise, to the Romans for their national system of roads, extending far beyond the four or five great highways known by name. They were built to last for ever, and it is quite a mistake to suppose that they fell into disuse during Saxon times. But the Romans were not great bridge-builders, and their legions could ford the shallow rivers. The need for bridges arose later, and their substitution for fords was the public work most typical of mediæval times. See the introduction to "Public Works in Mediæval Law," Vol. II, xix, Selden Society, edited by Mr. C. T. FLOWER. The Church constantly regarded the building and maintenance of bridges as a work of piety and charity, and bequests were often made for that purpose.

But as the bridges were built by private owners, and there was no public authority concerned to keep them in repair, they used to fall into decay and become dangerous, or be washed away by floods. As a rule nothing was done for a long time, perhaps years, until some important man was drowned trying to ford the stream, and then the invariable procedure was for the sheriff to summon a jury to inquire into the facts, and to find whether the bridge was out of repair, and who was liable to repair it, on the principle of *ratione tenuræ*. The jury generally presented that the duty of repair lay on an abbot or a lord of the manor, or less often upon the inhabitants of a township. Sometimes they found the problem too difficult to solve, as in the case of a bridge at Woking, which a jury of 1353 found that no one was liable to repair. In *R.* v. *Sutton* (1838), 6 Ad. & E. 516, the defendants were indicted for non-repair of a bridge, and produced a record from the Exchequer Court of 17 Edw. III of proceedings against the Bishop of Lincoln, a predecessor in title of the defendants, for non-repair of the same bridge, when the jury found that the bishop was not liable merely because his predecessor had once "charitably bestowed on the workmen repairing the bridge 40s." The court admitted the record as material to the issue, and the verdict found for the defendants held good.

The first statute to deal with bridges was the Magna Carta of 1297 (25 Edw. I, c. 15) which provided that no town or freeman should be distrained to make bridges or banks but such as of old had been accustomed to make them.

The Statute of Bridges (1530) authorised the justices of the peace in every shire or borough to inquire into the cases of broken bridges and to award process against the offenders, and if the persons liable to repair could not be discovered, made the inhabitants of the town or district liable, and appointed collectors of rates and surveyors. This Act also affirming the common law, declared that the liability to repair extended to the approaches, i.e., the highway within 300 feet of the ends of the bridge. An amending Act passed in 1702 (1 Anne, c. 12) improved the machinery for the collection of rates, it having been discovered that in some places more money had been raised than was necessary. The Bridges Acts, 1740, 1803, 1812, 1814 and 1815 made minor amendments of the law. Finally the Highways and Bridges Act, 1891, empowered county councils and other highway authorities to enter into agreements for the construction and improvement of bridges in public highways, but did not affect privately owned bridges.

Turning to the Bridges Act, 1929, by s. 1 the Act is to apply to all bridges carrying a public road over any railway, canal, river, creek, watercourse or marsh, or any ravine or other depression, not being bridges for the repair of which a highway authority is responsible. The powers of the Act are to be exercised by county councils and borough councils, except that where the road at each end of a bridge in an urban district or metropolitan borough is vested in the urban or borough council, then the council is the authority. By s. 2 the highway authority may agree with the owner of the bridge for (1) the payment by the authority of contributions towards the cost of repairing the bridge, (2) the transfer to the authority of the responsibility for the maintenance and improvement of the road, or of the property in the bridge and the approaches thereto. The owner of the bridge, even though it was constructed under statutory powers, may enter into and carry out such agreement. This will enable any bridges over railways and canals to be transferred to highway authorities and to become for all purposes part of the highway.

By s. 3, where a bridge has become dangerous or unsuitable for modern traffic, including future developments, the owner may apply to the Minister of Transport for an order for its reconstruction or improvement, and the Minister is given very wide powers of making such orders and of determining the future liability of maintaining the bridge and its approaches, including power to modify any statutory provisions, subject to the consent of the owner of railway or canal bridges. When a bridge crosses tidal lands the order is to contain any provisions the Board of Trade may deem necessary. But no order is to be made under the section with respect to any bridge at which there is a right to take tolls. Sections 4 and 5 contain provisions for the protection of railway and canal companies and public utility undertakings. Section 6 deals with the apportionment of costs of orders for re-construction between the owner and the highway authority, to be referred, in default of agreement, to arbitration. Sections 7 to 10 deal

with arbitrations, expenses and borrowing, inquiries by the Minister, and power to make rules of procedure. Sections 11, 12 and 13 contain savings for the Manchester Ship Canal, the Weaver Navigation and the Postmaster-General respectively. Section 14 is the definition section, and by s. 15 the Act is applied to Scotland with certain modifications. By s. 16 the Bridges Acts 1740 to 1815 and the present Act may be cited as the Bridges Acts, 1740 to 1929, and the Act is to apply to Northern Ireland.

The Act will be most useful in permitting public funds to be used in maintaining or reconstructing bridges carrying public roads, but vested in private owners, who, though liable to repair them, are under no obligation to re-build them so as to make them safe for heavy traffic which is compelled at present to make long detours.

Company Law and Practice.

III.

HAVING considered in the last two issues some of the more important points which are to be remembered in connexion with the Articles of Association of a company if they are not altered to conform with the new law, we may now turn our attention to the question as to what alterations are either necessary or desirable if and when it is proposed to bring the Articles up to date; in the first place the points previously mentioned in this column should receive attention when such alterations are proposed.

Last week we had under discussion the indemnity clauses which have become so common in Articles, and it was pointed out that s. 152 of the Companies Act, 1929, practically renders those of no effect as from 1st May, 1930, but without prejudice to anything previously done or omitted while such provisions were in force; s. 152 (*c*) does, however, limit the operation of the section so as to give a company a very restricted right of giving indemnity to the extent and in the manner there set out, and, if the company wants to be in a position to exercise this, it would be as well expressly to give it the power to do so.

Is it desired to have power to issue redeemable preference shares? If so, the articles must duly make provision for such power and other matters connected with it. Section 46 provides that, subject to the provisions of the section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are liable, to be redeemed. The new Table A confers the necessary authority by Article 2, the closing words of which now run as follows: "... and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company, is liable, to be redeemed."

REDEEMABLE PREFERENCE SHARES.

Section 46 provides that where redeemable preference shares are redeemed out of the profits of the company which would otherwise be available for dividend (they can only be redeemed either in this way or out of the proceeds of a fresh issue of shares made for the purposes of the redemption) there must be transferred to a fund called the capital redemption reserve fund a sum out of profits otherwise available for dividend equal to the amount applied in redeeming the shares. The provisions of the Act relating to reduction of capital apply to the capital redemption reserve fund as if it were paid up share capital of the company, except that where the company issues any shares under the power conferred on it by s. 46 (4) to issue shares up to the amount of those redeemed or about to be redeemed as if they had never been issued, the capital redemption reserve fund may be applied up to an amount equal to the nominal amount of the shares so issued in paying up unissued shares to be issued to members as fully paid bonus shares.

Hence, it is advisable that the articles should state that the company may reduce its capital redemption reserve fund, and this will conveniently come in the article dealing with reduction of capital, as it is governed by the same rules. Article 38 of the new Table A shows how this can be neatly done.

But this does not dispose of redeemable preference shares as far as the articles are concerned, because s. 46 (3) provides that, subject to the provisions of the section (the material ones of which for this purpose have been touched upon above, except that it should be added that shares cannot be redeemed unless they are fully paid and that, where they are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of profits before redemption), the redemption of preference shares may be effected on such terms and in such manner as may be provided by the articles. Those who wish to issue such shares should therefore decide how the shares are to be redeemed, remembering that s. 46 must always be complied with, and some clause or clauses should then be drawn for giving effect to the decision. The new Table A is silent on the point, hence Table A as it stands appears to be totally useless from the point of view of a company wishing to redeem any redeemable preference shares, though it is thereby given power to issue them, and though Table A also provides for the reduction of any capital redemption reserve fund after they have been redeemed.

Two final reminders in connexion with redeemable preference shares, though outside the Articles as such. Every balance sheet of a company which has issued redeemable preference shares must contain a statement specifying what part of the issued capital consists of such shares, and the date on or before which those shares are, or are to be liable, to be redeemed (s. 46 (2)). Default in complying with this requirement may involve the company and every officer in default in a fine of £100. Within one month after redemption the company must give the Registrar of Companies notice thereof, specifying the shares redeemed; the maximum penalty for default in this case is £5 for every day during which the default continues, on the company and every officer in default (ss. 51 and 365).

(*To be continued*).

A Conveyancer's Diary.

Discretion to Postpone Conversion.

In consequence of some correspondence before me on the subject, I should like this week to call the reader's attention again to the letter of the Public Trustee appearing on p. 270 of THE SOLICITORS' JOURNAL for the 26th October, and the comments thereon in "A Conveyancer's Diary" in the same issue.

The point taken by the Public Trustee was that there is an important distinction between a power to postpone conversion and a power to retain existing investments. He says, in effect, that in the former case if an investment held by the trustees depreciates in value the burden is thrown upon the trustees of proving that they had reasonable ground for thinking that it would appreciate, whilst, in the latter case, the *onus* is on the beneficiaries to prove that the trustees have acted negligently or carelessly.

In support of this proposition Sir Oswald Simpkin cited *Re Chaytor* [1908], 1 Ch. 233, and *Re Inman* [1915], 1 Ch. 187.

I have before me a letter from an eminent conveyancer for whose opinion I have the greatest respect. He suggests that the point made by the Public Trustee is a good one, but considers that the authorities quoted are inadequate, and that the real authorities are: *Re Chancellor* (1884), 26 Ch. D. 42; *Re Smith* [1896], 1 Ch. 171; *Re Marshall* [1914], 1 Ch. 192; *Re Craven* [1914], 1 Ch. 350, and *Re Godfree* [1914], 2 Ch. 110.

The matter is really one of no little importance, and the reader will find these cases well worth a close study. In this article I can only refer briefly to them.

In the first place, it is to be observed that in none of these cases was the liability of the trustees for depreciation in the value of the investments retained by them before the court. The question of burden of proof did not therefore arise.

In *Re Chancellor*, the point for decision was whether a tenant for life was entitled to the whole profits derived from a business, the sale of which the trustees had postponed. It was held, on construction, that she was. *Re Smith* was also concerned with the sale of a business. The testator gave all his residuary estate to trustees, upon trust for sale, and particularly directed that his business should be sold with all convenient speed after his decease, and later in the will there was a power to postpone. It was held, on the construction of the will, that the trustees ought not to postpone the sale of the business indefinitely, but the court authorised them to retain and carry on the business for two years with liberty to apply at the end of that time.

In *Re Marshall* the trustees, having a power to postpone, sought to hold as a whole a block of shares in a company against persons who were absolutely entitled to a share therein. It was held that the right of the absolute owners of a share to have a proper proportion of the shares in question transferred to them prevailed over the discretion of the trustees. In that case there was a power to retain the particular shares as well as a power to postpone conversion.

Re Craven decided that the power to postpone did not confer a power to appropriate unauthorised investments retained under that power, to certain settled shares. *Re Godfree* was a case between tenants for life and remaindermen, in which it was decided, upon the construction of the will, that the tenants for life were entitled to the whole income arising from unauthorised investments the conversion of which had been postponed.

It will be seen, therefore, that, so far as regards the actual decisions in these cases, the point raised by the Public Trustee is not covered. There are, however, some expressions in the judgments which are material and should be considered. Thus, in *Re Chancellor*: "That being so, the trustees had power to postpone the sale of the business, not for the purpose of carrying it on to make a profit, but to carry it on for such a reasonable period as would enable them to sell it profitably as a going concern" (Cotton, L.J., at p. 46); in *Re Marshall*: "The power to postpone according to the true construction of the clause is a power to postpone conversion for a reasonable time for the benefit of the estate" (Swinfen-Eady, L.J., at p. 202); in *Re Craven*: "What I have here is an absolute trust to convert, followed by a power to delay realisation and consequently to postpone the actual distribution of the residue. It is not a power to the trustees to retain investments which would go on through the whole continuance of their trust, but only a power, at their discretion, to postpone the realisation of investments which for the time being they thought it undesirable to convert" (Warrington, J., at p. 374); and in *Re Godfree*: "It is true that the trustees in the present case have no power to permanently retain the securities in question. They have only power to postpone the sale or conversion, but I do not think that that distinction really affects the question before me, though it may affect the duties of the trustees in the exercise of their discretionary power of postponing the sale and conversion" (Warrington, J., at p. 114).

Now, it certainly seems that these extracts go to show that there is a distinction between a power to postpone and a power to retain. Warrington, L.J., in terms, suggested as much in the course of the argument in *Re Craven* (at p. 365). To that extent, no doubt, the extracts bear out the view expressed by the Public Trustee. But, after all, what do these judicial pronouncements amount to? It seems that a power to postpone (as distinct from a power to retain) is a power to postpone "for a reasonable period" or "for a reasonable time for the benefit of the estate," or to postpone the realisation of investments which "for the time being they thought it undesirable to convert." Quite so, but if the trustees have a discretion which makes them the persons to decide what is a reasonable time, or when it is desirable to sell, the cases do not appear to carry the matter much further. In *Re Crowther* [1895] 2 Ch. 61, Chitty, J., said "For myself, I cannot see if a testator says his trustees may postpone the sale for as long as they deem expedient, how this gives them only some undefined and limited power of postponement." That, at any rate, seems plain enough, and indicates that in the view of that learned judge the discretion to postpone is not limited as some of the judicial observations in the other cases mentioned might imply. Assuming, however, that the discretion is so limited, it may be doubted whether that has the effect of shifting the burden of proof to trustees as the Public Trustee suggests.

There is another interesting letter from Mr. H. Arnold Woolley, which was suggested, he says, by the letter of the Public Trustee with which I have been dealing.

Mr. Woolley says, that where land is settled on trust for sale with power to postpone, it is the practice of the Estate Duty Officer on the death of the tenant for life, to treat the land as personalty, although the person next entitled elects to take and keep it as land, with the result that duty is payable at once instead of by instalments spread over eight years, and with the further result that the relief in cases of "quick successions" to land may be lost.

The question which Mr. Woolley rais sis, no doubt, of general interest, and must often be of considerable importance to those upon whom the burden of death duties falls.

The attitude taken by the Estate Duty Office seems to be that a trust for sale with a power to postpone effects a conversion for all purposes, a proposition which appears to have received support from the decision in *Re Kempthorne*.

Mr. Woolley makes a good point with reference to the effect of s. 25 (4) of the L.P.A., 1925.

The subject is altogether too interesting to be delegated to the tail end of an article, and I hope to be able to return to it in a future issue.

Landlord and Tenant Notebook.

Want of Repair: Landlord's Knowledge.

It has long been settled that when a landlord enters into a covenant to repair—which must necessarily be an express covenant—or is under a statutory duty to repair, e.g., under the Housing Acts, his liability remains subject to an implied condition as to knowledge of any defect. The basis of this rule of law is common sense. "We are irresistibly driven to say that the parties cannot have intended so preposterous a covenant as that the defendant should keep in repair that of which he has no means of ascertaining the condition" (*Makin* v. *Watkinson* (1870), L.R. 6 Ex. 25, 28.

Since the above-mentioned decision, the exact extent of the implied condition has been discussed in numerous cases, and questions have been raised as whether mere means of knowledge on the part of the landlord will render him liable, or whether notice must be given him, and, if so, whether the notice must emanate from the tenant.

In *Tredway* v. *Machin* (1904), 48 Sol. J. 671, C.A., it was said that the landlord must have express notice of the want of repair, means of knowledge not being the equivalent of actual knowledge. Two subsequent cases, however, show that there are circumstances in which notice can be dispensed with.

Thus, *Melles & Co.* v. *Holmes* [1918] 2 K.B. 100, of great interest to landlords and tenants of flats, was decided in favour of the lessees of the first and second floor of a building, the landlord of which had covenanted to keep the outside, the

roof, etc., in good and tenantable repair. The top floor was let to another tenant. A gutter became blocked, and the plaintiff's property was damaged by rainwater. The landlord was totally ignorant of the defect, though he had the roof periodically inspected; but on the principle that when the landlord remains in control no notice is necessary judgment was given against him. This case should, of course, be distinguished from those illustrating the duty of a landlord retaining control of part but not entering into any covenant, when the position is different.

In the Irish case of *Murphy* v. *Hurly* [1922] 1 A.C. 369, the facts were peculiar. The landlord was under a duty to repair a sea wall protecting several properties. A breach in one part of the wall might affect a tenant who had no more knowledge of it and no better means of knowing of it than the landlord. The landlord was held liable, but their lordships were careful to point out that their judgment was limited to the facts and that they had no desire to alter or restrict the general rule.

As to whether notice must be given by the tenant, no case has yet arisen in which the landlord has received information from a third party. In *Hugall* v. *M'Lean* (1885), 53 L.T. 94, Brett, M.R., said: "I doubt whether, if the landlord had notice *aliunde*, he would be liable"; in *Torrens* v. *Walker* [1906] 2 Ch. 166, Warrington, J., said, likewise *obiter*: "I think it (notice) must be from the tenant, not *aliunde*." In various other cases the rule has been expressed without reference to the tenant—thus in *Manchester Bonded Warehouse Co.* v. *Carr* (1880), 5 C.P.D. 507, it was said that the landlord "had no notice"; in *Broggi* v. *Robins* (1899), 15 T.L.R. 224, C.A., that his "attention should be drawn"; in *Tredway* v. *Machin*, *supra*, "unless . . . he has received notice"; but, looking at the judgments as a whole, it cannot be said that they contemplate anyone but the tenant giving notice to or drawing the attention of the landlord to, the defects. More recently, in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131, C.A., Hanworth, M.R., used the expressions "the tenant must give notice" and "notice . . . by the tenant."

The last-mentioned case also decides (approving *Broggi* v. *Robins*, *supra*) that a right of access (the liability sprang from the Housing Act, 1925) does not make notice unnecessary, and that the rule applies to latent defects as well as to patent defects. Another recent decision of some importance is that of *Griffin* v. *Pillet* [1926] 1 K.B. 17, in which it was held that the notice need only draw attention to the fact that a defect exists. The tenant advised his landlord that the steps wanted attention; the landlord sent his builders to investigate; in consequence of what they found, preparations were made for thorough repairs, but before these could be or were executed, the steps collapsed and the tenant was injured. The court held that the circumstance that the tenant's message did not indicate the degree of want of repair did not absolve the landlord; and it seems that liability would have attached even if the accident had occurred before the preliminary survey and report by the builder.

Our County Court Letter.

DAMAGE FROM OVERHEAD TRAMWAY EQUIPMENT.

Actions relating to the above will tend to become rarer, in view of the substitution of motor omnibuses for tramways, and technical improvements such as the bow collector in place of the trolley pole, but the importance still retained by the subject is shown by the recent case of *Wright* v. *Leeds Corporation*. The claim was for £24 12s. 10d., as the amount of damage caused to a motor car by the fall of an electric tramway wire, owing to the alleged negligence of the defendants' servants. The plaintiff's case was, that (1) the break in the wire occurred outside an "ear," or support of the wire; (2) the wire was cracked before the actual fracture; (3) an inspection would have revealed the crack. The defendants denied negligence, and contended that the break was within the "ear," and could not have been discovered on inspection, as the wire was examined a few days before the accident. His Honour Judge Woodcock, K.C., held that there was no negligence, as (1) the cable was of a suitable gauge and of the proper type for the work on that section; (2) it was properly attached to the "ear"; (3) it had been regularly and properly inspected; (4) the defect was either latent or, more probably, was so slight that it could not be detected with ordinary skill and care. The case also failed on the ground of nuisance, as the mere fall of a cable was to be regarded as incidental to the carrying on of such a statutory undertaking, and must have been so contemplated by the Legislature. If, however, the cable had fallen on the road to the knowledge of the undertakers, and—owing to their undue and inexcusable delay in dealing with it—a passing car had sustained injury, they would then have been liable for permitting a nuisance on the highway. There being also no cause of action under the Tramways Act, 1870, the defendants were entitled to judgment, with costs on Scale C.

This decision followed *Newberry* v. *Bristol Tramway and Carriage Company Limited* (1913), 57 Sol. J., p. 172, in which the plaintiff claimed damages for personal injuries by reason of the defendants' negligence. The plaintiff was travelling on the outside of a tramcar, when the trolley wheel came off the wire, with the result that the pole became entangled in the overhead gear, and—being torn away from its socket in the standard—the pole fell upon and injured the plaintiff. The plaintiff's case was that this was *primâ facie* evidence of negligence, under the doctrine of *res ipsa loquitur*, but the defendants called technical evidence to show that (1) they had adopted the best and most widely used system; (2) the apparatus on the particular car was in perfect order; and (3) there was no patent defect. The jury found that the defendants had been guilty of negligence—by reason of insufficient precautions to ensure the safety of passengers—but were unable to suggest what precautions should have been taken. Mr. Justice Channell therefore gave judgment for the plaintiff for £150, but the Court of Appeal reversed the decision. Sir H. H. Cozens-Hardy, M.R. (as he then was), pointed out that the defendants, while bound to take every reasonable precaution, were not insurers. The apparatus was worked without negligence by the men employed, and the defendants were not responsible for a rare and obscure accident, which could not be prevented by any known means. Lord Justice Farwell dissented on the ground that the defendants had taken a chance, owing to the rarity of such accidents, but Lord Sumner (then Mr. Justice Hamilton) agreed that the appeal should be allowed.

The Tramways Act, 1870, s. 55, *supra*, provides that the promoters shall be answerable for all accidents, damages and injuries happening through their act or default, or that of any person in their employment, by reason or in consequence of any of their works or carriages. The wide terms of this section have been restricted in practice by decisions such as *Brocklehurst* v. *Manchester, etc., Steam Tramways Co.* (1886), 17 Q.B.D. 118, where it was held that the section only applied to a wrongful act or default, and did not render the promoters liable for mere accident without negligence.

ILLEGAL SLAUGHTER OF ANIMALS.

Kent and Sussex Wholesale Butchers and Graziers, Ltd., were summoned recently at Hailsham (Sussex) under the Lord's Day Observance Act for slaughtering a bullock and five sheep on a Sunday. It was stated that the animals were killed by the Jewish Rabbi of Eastbourne. They could not be slaughtered on the Saturday as that was the Jewish Sabbath. The solicitor for the prosecution said that Sunday was not a day observed by the Jews, but they were bound by the law of the land in which they lived. The Magistrates decided that an offence had been committed and imposed a fine of 1s.

Practice Notes.

MOTORISTS AND THE LAW OF PROPERTY ACT, 1925.

A RECENT case at Henley-in-Arden shews that the right of access to commons, which is conferred upon the public by s. 193 (1) of the above Act, does not include the right to drive a vehicle thereon. The latter restriction is imposed by s. 193 (1) (*c*), and the person entitled to the soil is entitled, under s. 193 (2), to declare by deed that the above section shall apply to the land. The deed must be deposited with the Minister of Agriculture, and thereafter an offence is committed—under s. 193 (4)— by any person who, without lawful authority, drives upon the land any carriage, cart, caravan, truck or other vehicle, and a fine may be inflicted of 40s. The land in question (Yarningdale Common) had been subject to certain abuses, and Mr. E. G. Wheeler-Galton, the lord of the manor, had taken the requisite steps to bring the above section into operation. A car park had been provided, at a prescribed fee of one shilling, but the defendant had stopped his car on the common, and had refused either to use the park or pay the fee. The defendant had driven away on being notified of the position by the attendant, and as the case was not pressed, he was fined 5s., including costs.

ARCHITECT'S NEGLIGENCE.

IN the recent case of *Marsom* v. *Richards*, at Lowestoft County Court, the plaintiff claimed damages, and the defendant counter-claimed £5 fees and £1 1s. the cost of obtaining a tender. The plaintiff had verbally engaged the defendant to prepare plans and specifications, and her case was that he had designed the house negligently, in that (1) a front bedroom was 5½ square feet smaller than the specified size, (2) the room, not having a fireplace, should have had a ventilator, as laid down in the bye-laws. The door had had to be made to open outwards, in order to introduce a single bed, which left insufficient room to open the drawers of a dressing table. It was alleged that the room had been made smaller in order to give headroom on the stairs, but the result had been to reduce the purchase value by £50. The defendant contended that the building would have been satisfactory, if the plaintiff's mother had not asked for the bathroom to be altered, and the builder's evidence was that the room in question was only a box-room. His Honour Judge Herbert Smith held that the original plans did not provide for a proper staircase, and judgment was therefore given for the plaintiff for £11 10s. damages, with costs, the counter-claim being dismissed.

DEDUCTION OF DISCOUNT FROM RATES.

THE question whether a ratepayer, having succeeded in an appeal, is entitled to deduct discount, was recently considered by the magistrates at Brierley Hill in *Waldron* v. *Dixon*. The respondent owned twelve houses, and under a previous assessment the rates payable had been £19, but on re-valuation the assessment was raised to £11 per house, and the amount demanded was £51 3s. As the result of an appeal, the assessments were reduced to £9 per house, and an amended demand note was served for £41 17s., which amount the respondent paid, less £9 2s. 8d. The latter sum was the discount at 15 per cent. allowed upon payment within four months of the making of the rate, but whereas the respondent contended that the rate was made on the 29th August (when his appeal was allowed) the rating officer contended that the relevant date was the 1st April, when the rate was sealed by the urban district council. It was suggested that the respondent should have paid the original demand under protest, but it was pointed out on his behalf that the houses were then assessed at more than £10 each, and that the urban district council only allowed discount to owners of houses of less than £10 assessable value. The magistrates were advised by their clerk that under the Rating and Valuation Act, 1925, s. 36 (1), a rate is to be levied in accordance with the valuation list, and is recoverable notwithstanding any appeal which may be pending. The discount period had therefore expired on the 1st August, and the magistrates duly ordered the payment of the above outstanding balance.

Legal Parables.

XLV.

The Solicitor who gave Practical Advice.

WHEN curious people asked Mr. Pundit, of the firm of Pundit, Dunno and Pundit, why on earth such a learned man as himself ever took into partnership such a dull dog as Mr. Dunno, Mr. Pundit was wont to smile and say that if he, Mr. Pundit, supplied all the learning, Mr. Dunno supplied something no less valuable that couldn't be got out of books. "That's why," he would add, "I always like clients to see us both together."

To them came a Business Man one day, a member of the firm of De Laye and Loosit, the world-famed carriers. They were, he announced, in no end of a fix, and in danger of losing a big contract, which they had had for years with Messrs. Hardenfast, the city merchants. The Business Man explained the facts. On several recent occasions their carman had failed to deliver Messrs. Hardenfast their goods by 8 a.m., according to contract. In vain had it been explained that the loss of time, which was never more than half-an-hour, had been due to causes over which they had no control.

"I told 'em once that the horse cast a shoe," he said, "and old Hardenfast simply laughed in my face and said he'd heard that story ever since he was a boy. Besides, I must admit it was a bit unfortunate, because I found out afterwards that it was a motor van that morning. Mostly it's been fogs, which you really must admit we can't possibly help; but old Hardenfast swears he'll cancel all our contracts and deal with another firm. What I want to know is, can the old blighter do it? Don't you lawyers call fogs 'Act of God,' or something? I mean to say, it's the very devil."

Mr. Pundit was already deep in the twenty-fifth supplement to Salisbury's "Encyclopædia of Laws." "Ah," he murmured, "This may be in point. There's that case of *Solon* v. *Solomon*. You remember, Dunno . . "

"Don't remember it at all," replied Mr. Dunno. "But let me alone. I'm thinkin'."

Mr. Dunno looked dull enough and the Business Man began to grow impatient. Mr. Pundit, however, raised a warning finger.

At last Mr. Dunno gave tongue. "Seems to me," he observed, "that it's all simple enough, and there's no law about it. Never mind whether he *can* cancel his contract or not, don't give him cause to."

"But my good man," interrupted the Business Man, "How can I help fogs, or snow or ice, for that matter? If you don't appreciate . . ."

"If you Business People weren't always in such a deuce of a hurry," said Mr. Dunno, going on steadily, "you'd see things for yourself instead of coming to us lawyers. Don't give this Hardenfast fellow cause to, is what I was sayin'. If you're late this morning, well, simply don't be late, that's all. Keep the goods over till to-morrow, and deliver 'em just before 8. I know these frightfully sharp, exactin' fellows. He'll never notice whether the goods are a day late or not. His eyes are always on the clock, and he forgets the calendar. Better be early to-morrow than late to-day. If that don't work, come back to us, and we'll find a way all right. Always deal with facts, and don't stand on your law. Mark my words, this Hardenfast fellow won't give any more trouble, if you take my advice."

And he never did

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Validity of Notice of Increase of Rent.

Q. 1767. On behalf of the landlord of a house held on a weekly tenancy, we have served upon the tenant the usual notice of increase of rent under the Increase of Rent, etc., Act, 1920, the increases claimed including 25 per cent. of the net rent under s. 2, sub-s. (1), para. (*d*), of the Act on account of the landlord's entire responsibility for repairs. The rent book contains a statement to the effect that the tenant is responsible for repairing broken windows, and in view of this the tenant's solicitors contend that the notice is invalid, and that no valid notice of increase can be served until there has been an order of the court or agreement between the parties as to the percentage payable in respect of the landlord's liability for repairs. It appears to us that the tenant's obligation to repair broken windows is so trivial a matter as to be incapable of monetary valuation, and that the maxim *de minimis non curat lex* applies.

A. If the liability to repair broken windows is so trivial, a fresh agreement should be made discharging the tenant's obligation, and the clause should be deleted from the rent book. At present it cannot be said that the landlord is responsible for the whole of the repairs, as required by s. 2 (1) (*d*) (i), and the matter is governed by s. 2 (1) (*d*) (ii). The tenant's solicitors are therefore correct in their contention, and the extent of the liability for broken windows can only be settled by evidence. The clause is unusual and the inference is that the premises are in a lawless neighbourhood, but if the proviso is obsolete there can be no harm in its cancellation.

Distress for Income Tax.

Q. 1768. I have been consulted by an income tax collector, duly authorised to levy distress for unpaid income tax, who, on proceeding to levy found the premises empty, the doors shut, but the windows open and no goods in the house. The garage, however, was open, and so was the outhouse at the back. In the garage and outhouse there were discovered sufficient goods to cover the levy and the costs. In the absence of the occupier of the premises and the supposed owner of these goods, is the collector entitled to levy on the goods above referred to, and should he do so by leaving a notice of distress affixed to certain of the goods distrained upon or should a notice be left upon the premises? It appears obvious from the facts that the defaulter either left the goods by inadvertence or thought perhaps they would be sold with the house, or it may well be that the goods do not belong to the defaulter. I think the authority of the income tax collector would cover these points and entitle him to claim the goods as against any other person, but I should be glad of your views thereon.

A. (1) The collector is entitled to levy on the goods if the assessment is under Sched. A or B, and therefore charged on the premises. Under the other schedules the assessment is on the person, and the distress must be levied on his goods only, and not those of third parties. If the latter prove their title the collector could not claim the goods, except under the above schedules.

(2) The collector should levy by removing the goods, and notice need not be left, provided the distress is kept for five days as laid down by the Income Tax Act, 1918, s. 162 (4).

(3) As there is no need to break open the house, a warrant from the General Commissioners is unnecessary, and the collector's authority is sufficient, under s. 162 (1) of the above Act.

Recovery of Money of Industrial and Provident Society.

Q. 1769. A was recently charged at the instance of the Registrar of Friendly Societies under s. 64 of the Industrial and Provident Societies Act, 1893, with withholding a certain sum of money. The justices inflicted a fine on A which has since been paid and ordered him to pay to the Registrar the sum claimed on or before a certain date, and further ordered that in default of payment of the said sum it should be levied by distress and sale of A's goods, and that in default of sufficient distress A should be imprisoned for two months. Is A liable to imprisonment without proof of means to pay? Ordinarily it is presumed that the order for repayment of the moneys withheld would be treated as a civil debt, see *Fishwick* v. *Gyani*, T.L.R., vol. XLI, p. 253, but having regard to the decision in *Vernon* v. *Watson*, 7 T.L.R. 334, referred to in *Fishwick* v. *Gyani*, it would appear that in the case of orders under the relative sections of the Friendly Societies Act and the Industrial Provident Societies Act it is not necessary to prove means in order that the defendant be committed to prison in default.

A. The above reasoning is correct. *Vernon* v. *Watson*, *supra*, was decided under the Friendly Societies Act, 1875, s. 16 (9), which is similar to the Industrial, &c., Societies Act, 1893, s. 64, and the Friendly Societies Act, 1896, s. 87. The imprisonment is therefore governed by the Summary Jurisdiction Act, 1879, s. 5, and no judgment summons or proof of means is necessary, as the amount is not a civil debt. If the defendant serves the sentence, however, execution will have been levied upon the judgment, and—the debt being satisfied—all further civil remedy will be barred.

Cash Accounts.

Q. 1770. A, a doctor in practice, was accustomed to make returns for income tax on the basis of cash actually received for each year instead of bookings, which were always accepted by the Inspector of Taxes. Some years ago A went into partnership with B on the terms that profits should be shared by them equally, all old accounts prior to the partnership and coming in subsequently belonging to A alone. The partnership continued for some years, until A died (14th December, 1927), and B, under the terms of the partnership deed immediately took over deceased's half share in the practice, accounts due during the subsistence of the partnership being collected by him and as regards one-half handed to the executors of A. The latter have since the death received the whole of any pre-partnership accounts paid and also one-half of all partnership accounts. The partnership returns for income tax were continued to be made on a cash basis and the surviving partner B continues and desires to do the same. During the year 1928-29 the surviving partner B received a small amount of pre-partnership and a fair amount of partnership accounts amounting in the aggregate to about £400, which he has accounted for and handed over to the executors. In rendering his return for 1928-29 on a cash basis B did not include the amount received and paid over to the executors, but the Inspector of Taxes declines to accept this, contending that as the practice has been taken over by B, the surviving partner, he is assessable upon the whole of the cash takings for the previous year. It is evident that if, instead of a cash basis a booking basis had been used, no question would have arisen. The executors apparently cannot be assessed direct on the amounts received, as no business is being carried on by them in respect of which an assessment can be made. The

surviving partner contends that he is only agent for the executors in the collection of the debts and that they do not form part of his income. I should be glad, therefore, of your opinion as to whether the Inspector of taxes is justified in his claim to assess B in this way and to insist on these accounts being included; and if so, what remedy, if any, B has to recoup himself against the executors.

A. As the death of A took place prior to the 6th April, 1928, B will be treated as a successor to the partnership, and for 1928-29 will be assessed on the income of the partnership in 1927-28. In 1929-30 the basis of assessment will be the amount received by B on his own behalf in 1928-29. It would seem that the fact that this practice has been assessed on a cash basis does not affect the principle, for in any case the assessment on B for 1928-29 would be on the joint profits of 1927-28. It is considered that the contention of the Inspector is correct, and that B has no power to deduct tax from payments to the executors of A.

The Rights of Shareholders.

Q. 1771. (1) Should a proxy be stamped before it is signed and is a postage stamp sufficient?

(2) Where shares are held by a number of people is it sufficient to have the proxy signed by the first person named of the several owners, or, must all parties sign it?

(3) Is a trustee for debenture-holders where nothing is mentioned in the resolution appointing him as to the length of time he is appointed for, entitled to claim that he is appointed for life?

(4) Is it correct to say that such trustee must be appointed at the annual meeting and that the ordinary shareholders have a vote in the matter?

I should mention that the articles of association of the company I am concerned in give no help, nor does the trust deed.

A. (1) A proxy must be stamped before signature under the Stamp Act, 1891, s. 80 (3), and a postage stamp is sufficient under s. 80 (2) if for one meeting, but if for several meetings it must be stamped with 10s. as a power of attorney.

(2) As the articles of association give no help, all the joint holders of the shares must sign the proxy.

(3) Yes, but he must be amenable to the beneficiaries, the debenture-holders, and if his life tenure of the trusteeship is inimical to their interests, they can proceed under the Trustee Act, 1925, s. 41, under which the court may, whenever it is expedient, make an order appointing a new trustee.

(4) It is incorrect to say that such trustee must be appointed at the annual meeting, which has no jurisdiction over the trustee, as the ordinary shareholders have no right to be consulted. They therefore have no votes, as these can only be exercised by the debenture-holders.

Open Contract—Obligation of Vendor to Convey free of Incumbrances.

Q. 1772. A vendor signed the following contract over a sixpenny stamp: "Received of A. Brown of [address] the sum of £80 being a deposit on his contract to purchase from me the leasehold property called Greenacre for £800 with vacant possession which will be given on the 24th December 1929." The purchaser now finds that Greenacre is mortgaged to a building society for £500, subject to the society's usual conditions as to quarterly repayments of capital and interest. Under the terms of the contract quoted above, can the purchaser *insist* on the property being assigned to him free from the mortgage, or *must* he take it subject to the mortgage?

A. Without doubt he can insist upon an assignment free of the mortgage. We quote the following from "Gibson's Conveyancing," 12th ed., p. 89: "Upon an open contract of sale of land there is an implied condition that the property is the vendor's to sell and that he will make a good title to it free from incumbrances."

Correspondence.

Poisoning Statistics.

Sir,—Referring to your article in The Solicitors' Journal of the 28th September last, and the paragraph in your issue of to-day's date, are you not aware that Lysol can be bought from a chemist without any questions being asked, the bottle merely being in a distinct shape and labelled "Poison," thus anyone for a few pence can buy Lysol freely.

Percy B. Ingoldby,
County Coroner.

Southampton,
2nd November.

[We have submitted the above letter to Mr. Marshall Freeman, the writer of the article published in The Solicitors' Journal on 28th September, and we are pleased to append his reply:—

Lysol as stated on p. 623 of your 28th September issue is in substance a modified form of carbolic acid. It was, I believe, originally a proprietary article and is only sold in original bottles. It is classified under the Poisons and Pharmacy Act, 1908, among the poisons enumerated in Part II of the Schedule to that Act, and may only lawfully be sold by a qualified chemist who must supply it in accordance with the regulations made under the Dangerous Drugs and Poisons (Amendment) Act, 1923. Unfortunately the legislature (I think unwisely) has decreed that an article of this nature, so long as it does not contain more than 3 per cent. of phenol (carbolic acid) may be sold by *anybody* (see "Poisons Substances" Regulations March, 1911 and October, 1912) so long as it is labelled "not to be taken" on the bottle and "poisonous" on the outside wrapper, and so long as the bottle or container is "rendered distinguishable by touch from ordinary bottles or containers."

The enormous number of poisoning cases due to "lysol" appears to call for the imposition of two new restrictions. Carbolic acid should be transferred from Part II to Part I of the Schedule to the Poisons and Pharmacy Act, 1908, and the purchaser should by law be responsible for keeping it (and all deadly and dangerous poisons similarly scheduled) under lock and key within his own control. An occasional sharp penalty inflicted upon a careless householder for allowing deadly poison to remain unguarded in his house would have a greater effect upon the public safety in this direction than any regulations that could be made to prevent indiscriminate sale.]

A Bar Examination "Poser."

Sir,—May I respectfully disagree with your solution of this poser. Is not this the case? I will assume that the property in the coin is in Miss C. McA. says to himself, "I want or shall be expected to give Miss C a tip. I must either do this with my own money or somebody else's. I will use her money." He then exercises acts of dominion over the 6d. by taking it and giving it to Miss C. He says, in effect, "I give you 6d. of my own money." He must have assumed ownership of the 6d. before he can bestow it as a gift. What real difference would there have been had Miss C. put the 6d. in her pocket and if McA. had dexterously picked it and then bestowed the 6d.? Joy-ride cases seem quite distinguishable. There the culprit borrows the car, brings it back and says (in effect) "I have brought back the car I borrowed from you." He doesn't say, "I am giving you a motor car."

Subscriber.

[I am not sure whether "Subscriber" considers McA. to have committed larceny, but, if so, I must adhere to the view that the words in s. 1 (1) of the Larceny Act, 1916 "with intent permanently to deprive," etc., would be a complete defence. If "Subscriber" merely thinks that McA. has committed a greater moral offence than a joy-rider, that is a spiritual matter on which I advance no claim to be an expert.—Your Contributor.]

Registration of Companies.

Sir,—We enclose a copy of a letter we have addressed to the Registrar of Joint Stock Companies, which we venture to think may be of interest to the profession.

London, W.C.1. SYRETT & SONS.
30th October.

The Registrar,
Joint Stock Companies,
Somerset House, W.C.2.

Sir,

Re Pellatt Colgan Ltd.

We to-day lodged the papers for registration of a small Company under the above title. The Memorandum and Articles of Association have, of course, been prepared under the Companies Acts 1908-1917. On attending at the department, however, we were informed that no papers are to be accepted unless they comply with the provisions of the new Act, which does not come into force until the 1st November.

We understand that applications by other firms of solicitors are being dealt with in the same way. We venture to suggest that the attitude of the department is most unreasonable and calculated to put our clients and ourselves to considerable trouble and expense. If the Registrar had decided to adopt this course we think the least he could have done would have been to have given notice to the profession and others through the public Press.

Yours faithfully,

30th October, 1929. SYRETT & SONS.

[We are obliged to our correspondents for their communication, and feel confident the authorities will appreciate the importance to solicitors of the point they raise.—ED., *Sol. J.*]

The Companies Act, 1929.

Sir,—Is it not somewhat strange that at a time when great prominence is given to the new Companies Act providing as it does, *inter alia*, for the disclosure in the prospectus of any underwriting commission paid, or payable, the Government has set such a bad example by not disclosing the underwriting commission on the Conversion Loan recently announced ?

London, F. J. H.
6th November.

Reviews.

Treatise on the Conversion of a Business into a Private Limited Company, with annotated Forms of Memorandum and Articles of Association and other Documents, and some Observations on Reduction of Capital. CECIL W. TURNER, of Lincoln's Inn, Barrister-at-Law. Fifth Edition. 1929. pp. 239, with Index. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

This very useful book regarding the formation of private companies and the law incidental thereto has now reached its fifth edition, in which is incorporated all the new law on the subject to be found in the Companies Act, 1929. The author has done his work well. He has without any unnecessary departure from the advice and forms which proved so useful in earlier editions, provided a complete up-to-date handbook which is at once a text-book on the law within the limitations of the subject with which it purports to deal and an admirable precedent book for the guidance of the practitioner in the formation of private limited companies and matters incidental thereto.

The importance of a work devoted entirely to private companies may, in some measure, be gauged by the fact that of the companies registered under the Companies Acts the private companies outnumber the public companies by about nine to one.

There is, of course, much useful matter in this book, which applies to all companies. The author has, by way of warning, gathered together and produced in a formidable list the many and various defaults involving liabilities to fines provided for in the new Act. Whether the learned author intended this as a deterrent to intending directors of companies or merely as a kindly reminder to those already holding directorates of the pains and penalties constantly hanging over their heads, we do not know. It will, at any rate, serve the purpose of bringing home to those who read it (of whom there cannot be too many) that their duties should be taken seriously and their office not regarded merely as a remunerative and not too onerous occupation. We recommend this book not only to the profession, but to all officers and others interested in the formation and management of the concerns of private companies.

The Law and Practice in Relation to Infants. By Miss B. A. BICKNELL, LL.B., Barrister-at-Law, Author of "Cases on the Law of the Constitution." The Solicitors' Law Stationery Society, Ltd., London, Liverpool and Glasgow. 15s. net.

To give some idea of the comprehensive nature of this excellent treatise it is only necessary to say that it deals fully with the important changes in the law as it affects infants brought about by the Guardianship of Infants Act, 1925, the Adoption of Children Act, 1926, and the Legitimacy Act, 1926, as well as the many provisions relating to infants in the Law of Property, Settled Land, Administration of Estates and Trustee Acts of 1925. The provisions are carefully and lucidly explained in a work which runs into 324 pages exclusive of Tables of Cases, Statutes, etc., whilst the Index is so well arranged that all concerned in the various branches of the important subject with which it deals will find it a book of reference which can readily be consulted. It should therefore prove of inestimable value not only to the practitioner, but also to magistrates and others interested in the subject generally. It is an extremely useful and practical work.

W. P. H.

Books Received.

The Law Relating to Motor Cars. By ROBERT P. MAHAFFY, B.A., and GERALD DODSON, B.A., LL.M., Barristers-at-Law. Third Edition. Demy 8vo. pp. 1929. London: Butterworth & Co. (Publishers), Ltd. 22s. 6d. net.

A Summary of the Law of Companies. By T. EUSTACE SMITH, Barrister-at-Law. 14th Edition by WILLIAM HIGGINS. Barrister-at-Law. Demy 8vo. pp. xxii and (with Index) 375. 1929. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

The Earl of Halsbury, Lord High Chancellor (1823-1921). Illustrated. A. WILSON FOX. Medium 8vo. 358 pp. (with Index). London: Chapman & Hall, Ltd. 30s. net.

Epitome of The Principal Changes effected by The Companies Act, 1929 (exclusive of Provisions relating to Companies Limited by Guarantee and Winding Up). Compiled by W. H. BEHRENS, Solicitor. Large Crown 8vo. 36 pp. 1929. London: Waterlow & Sons, Ld. 2s. 6d. net.

The Contract of Sale of Goods. R. A. EASTWOOD, LL.D., Barrister-at-Law (Longmans' Series in Commercial Law, No. 1. General Editor: Professor R. A. EASTWOOD). Crown 8vo. pp. viii and (with Index) 120. 1929. London: Longmans, Green & Co. 3s. 6d. net.

The Law Student. A Magazine for Students and Lawyers. Vol. VII, No. 1. October, 1929. American Law Book Co., Brooklyn, New York.

The Bombay Law Journal. Vol. VII, No. 5. October, 1929. The Union Press, Bombay. Rs.2.0.0.

Notes of Cases.

High Court—King's Bench Division.

In re Thomas Hirst and the Liverpool Victoria Friendly Society.

Rowlatt, J. 30th October.

ASSURANCE—INDUSTRIAL POLICIES—STATUTORY LIMIT EXCEEDED—POLICIES ILLEGAL—FRIENDLY SOCIETIES ACT, 1896 (59 & 60 Vict., c. 25), s. 62—FRIENDLY SOCIETIES ACT, 1924 (14 & 15 Geo. 5, c. 11), s. 2 (1)—INDUSTRIAL ASSURANCE ACT, 1923 (13 &14 Geo. 5, c. 8), s. 5 (1).

Award in the form of a special case.

Thomas Hirst claimed from the Liverpool Victoria Friendly Society the repayment of the premiums paid by him on two policies of industrial assurance, namely (*a*) a policy of the 17th April, 1920, on the life of his daughter, Margaret E. Hirst, then aged three months, and (*b*) a policy of the 15th August, 1925, on the life of his son Thomas Hirst, then one month old. Both assurances were at a premium of 2d. per week, assuring the amounts set out in the infantile table printed on the policy. Hirst claimed that each of the policies was illegal, inasmuch as the society insured respectively sums exceeding the amounts severally specified in s. 62 of the Friendly Societies Act, 1896, and s. 2 (1) of the Friendly Societies Act, 1924. If the policies were respectively illegal, Hirst was entitled, under s. 5 (1) of the Industrial Assurance Act, 1923, to be paid by the society a sum equal to the surrender value in respect of the first policy, and a sum equal to the amount of the premiums paid by him on the second policy. The society admitted that, while the sums assured for 1d. per week were within the statutory limits, the sums assured for 2d. per week, save for the limitation under the Act, would exceed in certain cases such statutory limits.

ROWLATT, J., said that all the case really amounted to was that the society had taken Hirst's money to assure a bigger sum than they were allowed to assure by statute, and then had said at the same time that they would not pay him. He, his lordship, thought that the case of *Harker* v. *Britannic Assurance Co., Ltd.* (72 SOL. J., 121; [1928] 1 K.B. 766) was the same as the present one, and he accordingly gave his judgment in favour of Hirst. The amount involved was £1 7s. 9d.; the society undertook to bear the costs of the reference.

COUNSEL: *Sir Walter Greaves-Lord*, K.C., and *Sir George Jones* for the claimant; *Gavin Simmonds*, K.C., and *Blanco White*, for the society.

SOLICITORS: *J. R. Cort Bathurst; Kingsley Wood, Williams and Co.*, and *Tickle & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

In re William Dawson and the London, Midland and Scottish Railway.

Rowlatt, J. 30th October.

RAILWAYS—AMALGAMATION—TRANSFER OF EMPLOYEE—CONDITIONS OF TRANSFER—DISMISSED AT AGE LIMIT—ORDINARY COURSE OF BUSINESS—RAILWAYS ACT, 1921 (11 & 12 Geo. 5, c. 55), Sched. 3 (3), (5).

Award in the form of a special case.

William Dawson, a fitter, at the date of the passing of the Railways Act, 1921, was a servant of the Maryport & Carlisle Railway Company. That company was later amalgamated with the London, Midland and Scottish Railway Company, and Dawson became a servant of the latter company from the 1st January, 1923. His employment was terminated on account of age by notice by the company on the 31st October, 1928, when he was sixty-six years old. Dawson thereupon claimed compensation from the London, Midland and Scottish Railway Company on the ground that it had been the practice of the Maryport and Carlisle Railway Company to continue their employees in their service without any age limit, and that such practice formed a condition of their service within the meaning of sched. 3 of the Railways Act, 1921, so as to entitle him to compensation either under paragraph 3 or paragraph 5 of sched. 3. The arbitrator was of opinion that para. 3 of the schedule did not on its true construction apply to the claimant's case, and that his services were dispensed with in the ordinary course of business, and that he had not suffered any direct pecuniary loss by reason of the amalgamation, and was not entitled to compensation.

ROWLATT, J.: It was perfectly obvious that the claimant had nothing at all to do with the transfer and amalgamation. He had lost his position because the railway company could not keep men on as they did before. There was no connexion at all between the loss of his place and the amalgamation. The arbitrator was right.

COUNSEL: *Sir Walter Greaves-Lord*, K.C., and *Walter Frampton*, for Dawson; *Stuart Bevan*, K.C., and *S. O. Henn Collins*, for the railway company.

SOLICITORS: *Pattinson & Brewer; Alexander Eddy.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Brighten *v.* Bowman.

Branson, J. 31st October, 1st November.

MONEY LENT—WHETHER BORROWED PERSONALLY OR AS AGENT FOR A COMPANY.

In this action George Stanley Brighten, a solicitor, claimed £500 which he alleged he had lent to the defendant, E. J. Bowman, in the following circumstances in January and February, 1929. Bowman was managing director and practically the owner of Bowman Radiators, Limited, and Brighten was the solicitor to the London Palatine Trust. Bowman Radiators, Limited, went into liquidation and the London Palatine Trust purchased that company, intending to assign it to a new company to be called Bowman Radiators (1928) Limited. Bowman, who was made managing director of the new company, was not, however, provided with funds by the London Palatine Trust to carry on the business until it was actually taken over, and he therefore approached Brighten, who advanced him £500 on the understanding, as alleged by Brighten, that he would hold Bowman personally responsible for the loan, although he, Brighten, would endeavour to recover it from the Trust. The London Palatine Trust went into liquidation, however, and the liquidator having refused to pay the £500 on the ground that there was no authority for the loan, Brighten now sued Bowman. Bowman pleaded that in accepting the loan he was merely acting as agent for the trust.

BRANSON, J., said that both the plaintiff and the defendant were interested in not allowing Bowman Radiators to be starved out of existence, but neither had authority to pledge the credit of the London Palatine Trust. He thought that Bowman gave his evidence honestly, but he, his lordship, had no hesitation in coming to the conclusion that he preferred Brighten's recollection of the facts.

COUNSEL: *G. Beyfus* and *Llewellyn*, for the plaintiff; *J. B. Hurst*, K.C., and *A. H. Davies*, for the defendant.

SOLICITORS: *G. S. Brighten; W. E. Crook.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

FROM LORD JUSTICE TO SOLICITOR.

Sir James O'Connor, K.C., a former Lord Justice of Appeal in Ireland, says *The Daily Telegraph*, is returning to the Irish Free State to practise as a solicitor. He has applied to the Lord Chancellor of England to be disbarred, and, at his own request, has been disbarred in Ireland. The return to the solicitors' profession of one who had forsaken it for the Bar, and who was a Lord Justice of Appeal and earned a substantial pension, is believed to be unprecedented.

THE HARDWICKE SOCIETY.

ANNUAL DINNER.

The Hardwicke Society held its annual dinner at the Hyde Park Hotel, on Friday, 1st November, the chair being taken by Mr. L. A. Abraham, the President. Those present included the Rt. Hon. Lord Finlay, the Rt. Hon, the Speaker of the House of Commons (Captain Fitzroy), Lord Clive, Lady Lavery, His Honour Judge Barnard Lailey, Sir Lonsdale Webster (Clerk of the House of Commons), Mr. Clarence Darrow (of the American Bar), Mr. Harold Lightman, Mr. F. W. Sherwood, Mr. Donald Geddes, Mr. Vivyan Adams Mr. R. L. A. Hankey, Mr. E. B. Stamp, Mr. Theobald Matthew, (author of "Forensic Fables"), Mr. A. L. Ungoed Thomas and Dr. T. B. Cross.

The Speaker of the House of Commons proposed the toast of "The Hardwicke Society," saying that he spoke as the President of an assembly which, although not a debating society, had debating as its business. Whereas, however, every utterance of a member of Parliament was closely scrutinised by his constituents, the Hardwicke Society was composed of independent members whose responsibility was their own. As a consequence the debates of the Society were probably freer and more lively: in fact a visitor to the House of Commons had held such a low opinion of the debating there that he had asked why they did not vote first and speak afterwards. The Society was serving a most useful purpose in training members to take their places in Parliament, for in the debates of the Society speakers knew that the result of the voting was much influenced by the speeches. Some of the most useful members who had ever adorned the House of Commons had come from the profession of the law; he hoped it would always be so. He said he himself had felt the want of a legal training on many occasions when he was called upon to give a ruling upon the interpretation of Bills, and enquired plaintively why it was that members of the legal profession were never able to express themselves in intelligent English. Draftsmen of the twentieth century, he went on, should surely be able to give their meaning in shorter and more concise and common language which the people could understand. In conclusion Captain Fitzroy said that he doubted whether anything could be more useful for the enlargement of the mind, for the efficiency of legal practice, for the development of eloquence and for the achievement of success in impressing a jury or perhaps, in time, influencing the House of Commons than participation in the debates of a society such as the Hardwicke.

The President, replying, said he would not proceed in the usual way to survey the progress of the Society, like the chairman of a company at the annual meeting. Lord Rosebery had said that the faculty of debating had exercised an undue influence in the affairs of men; Mr. Abraham thought that if anyone were to ask why the Anglo-Saxon race had succeeded in working Parliamentary institutions in a manner which had excited the admiration and envy of the civilised world, one very good answer would be: by long practice in the art of debating. Debating trained us to examine the basis of our own opinions and taught us respect for the opinions of those who differed from us. It was probably to the art of debating and the mental processes which it forced upon one that we owed, to a large extent, that genius for compromise which had been the best guarantee in our history for ordered political progress. Debating only came by practice, and for eighty years or more the Hardwicke Society had provided a forum at which newcomers to the Bar learned by practical experience how to debate and how to speak. The present generation had endeavoured to carry on the tradition worthily and hand it over unimpaired to their successors.

Mr. G. G. RAPHAEL, the Hon. Treasurer, proposed the health of "The Bench and Bar." A feeling to which all members of the Bar subscribed with real sincerity, he said, was gratitude to the occupants of the Bench for the kindly encouragement and support which they invariably extended to younger counsel. A witness of doubtful antecedents had once been asked whether he had not been convicted a number of times for various offences. The judge had intervened and ruled the question out as most improper. Thereupon the witness, with a magnificent gesture, had said, "Never mind, my lord, these young counsel, they must learn." This kind of tolerance was perhaps rare in witnesses, but was invariably given by judges. They also obtained sympathy and encouragement from senior barristers. Mr. Bevan had the shortest biography in the whole of "Who's Who," but the members of the Society did not need to refer to that work to know all about him. The speaker could therefore propose the toast with the utmost confidence.

The Rt. Hon. Lord FINLAY, replying, recalled the story of Charles Fox, the best debater that had ever adorned the House of Commons, who had said that in five sessions he spoke on every night except one, and that his only regret was that he had not spoken on that night also. Debating was a most important art and one which could be learned. Rhetoric, he feared, was nowadays at a discount. The inspired oratory of Mirabeau was probably as rare as great poetry. Between these two arts, however, there was a great distinction. A familiar passage of Horace, an author whose acquaintance he and the Rt. Hon. Speaker had made together, had declared that mediocre poets could be tolerated neither by gods nor by men. The same restriction did not apply to speaking, for any person of ordinary intelligence who was willing to devote a reasonable amount of time to learning the art of speaking could learn, if not to be a great orator, at least to express himself clearly and coherently and obtain a hearing from any ordinary audience. The importance of this training to those who wished to practise at the Bar could not be exaggerated. Thirty years ago Lord Finlay's father had given him this advice, which he had always found profitable; to go to the debates, not to prepare anything, not necessarily to know beforehand what was to be the subject, but to listen and then to rise late in the debate and try to deal with the points of earlier speakers with which he had not agreed. There was, Lord Finlay said, an anonymous publication about the Temple called "Forensic Fables." Who wrote that admirable letterpress and who drew those incomprehensible drawings he had not the slightest idea, but in that work there appeared a gentleman called Mr. Justice Grump. If any of his audience should desire to understand exactly what an English judge was, let him read the account of Mr. Justice Grump; equally let him look at the drawing of Mr. Justice Grump; and he would know all about what English judges looked like. The administration of the law depended upon the complete co-operation of the Bench and Bar. It was vital that the Bar should feel that they could get a fair hearing from the Bench; it was none the less vital that the Bench should feel that they could rely absolutely on receiving a straight deal from the Bar. Lord Finlay rejoiced to know that the Bench did feel that nowadays, and he was certain that this co-operation would ensure that the traditions which they had received from the past would be handed on undimmed to those who came afterwards.

Mr. STUART BEVAN, K.C., M.P., also replying, said that generally when he was called upon to reply for the Bar he was conscious that somewhere in the audience was a disgruntled litigant, and was at pains to explain with great clarity and force that the immutable laws of nature prevented one body from being present in two places at once. It would be ideally pleasant if he could point out at length how hard-working and ill-paid was the profession to which they all belonged and how proud they all were of belonging to it. He had never been a member of the Hardwicke Society, but proposed to seek election immediately.

The VICE-PRESIDENT, Mr. Ifor Lloyd, proposed "The Guests." He said that the sick feeling which had seized him that afternoon when he had contemplated his task had reminded him of a friend of his who had had an attack of influenza on the day on which he was to make an after-dinner speech. He had tried to get out of his engagement in vain. His speech had been greeted with tumultous applause; it was a great speech. All he had taken was a plate of dry toast and two and a half bottles of champagne. Mr. Lloyd said he wished he had had a little more toast that evening. It was always difficult to toast the guests without being personal, or to be personal without being slightly impertinent; if one tried fulsome flattery, one was liable to blunder into veracity. To-night, however, he had done his best and by careful preparation had succeeded in preparing a speech which did not contain a vestige of truth. With that provision might he say how gladly he welcomed the Society's distinguished guests. He drew a close parallel between the Society and the House of Commons, saying that during the last Parliament there had been from thirty-five to forty members of the Hardwicke Society in the House. Another fact showing the close connection between the Society and the House was that the House rose on Friday afternoons punctually at four, when the Hardwicke met. He welcomed

Mr. Clarence Darrow, a great American criminal lawyer, who had probably more acquittals on his conscience than any of his colleagues, even though the American system of jurisprudence seemed invariably to end in the restoration after many vicissitudes, of the accused person " to his friends and his relations."

Mr. Clarence Darrow, in reply, said that American travellers just now were divided into two classes; those who could get back home and those who could not. He was still here. He said that he had no acquittals on his conscience, but he had a few convictions. Referring to the Scopes case in Tennessee, he said that, wishing to be perfectly fair, as lawyers always did, he had insisted that a learned advocate be retained to represent the monkey, as it was hardly just that a helpless order of animals should have forced upon them kinship with human beings. In this case, and at other times, he had been called a criminal lawyer. When the American Bar Association spoke of a criminal lawyer they meant what he himself did; one who was interested in human rights rather than in money. He had not chosen this branch of the profession, but it had come to him by fate; it meant poor fees and not the highest standing, but it meant the very closest acquaintance with the most downtrodden section of humanity. Crime sprang from poverty and persons reared in poverty-stricken conditions were little to blame for becoming criminals. The aim of the lawyers of the future should be to cure and not to punish.

Societies.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, 29th October (Chairman, Mr. Gerald Thesiger, the subject for debate was: " That this house deplores the result of the last General Election."

Mr. C. C. Ross opened in the affirmative. Mr. H. J. Baxter opened in the negative.

The following members also spoke: Messrs. J. C. Christian-Edwards, C. F. S. Spurrell, T. F. Ginnett, R. M. Erskine, A. L. Philips, P. H. North Lewis, E. E. Pugh, E. G. M. Fletcher, A. Kramer, and R. Hengler.

The opener having replied, and the Chairman having summed up, the motion was lost by two votes.

There were fifteen members and three visitors present.

Rules and Orders.

1929, No. 831/L. 18.

THE COMPANIES (BOARD OF TRADE) FEES ORDER, 1929, DATED OCTOBER 11, 1929.

The Lord Chancellor and the Treasury, in pursuance of the powers and authorities vested in him and them respectively by section 305 of the Companies Act, 1929,(*) section 2 of the Public Offices Fees Act, 1879,(†) and all other powers enabling him or them in this behalf, do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require him and them, make, concur in, and sanction the following Order:—

1. The fees and percentages set out in Tables A and B annexed to this Order in respect of proceedings in the Winding-Up of Companies, shall be taken in the office of the Board of Trade, or of any Official Receiver, or of the Registrar of Companies, as the case may be, in accordance with and subject to the directions contained in the said Tables.

2. Where the head office of the Company being wound up is situated out of England, and the liquidation takes place partly in England and partly elsewhere, or where the Court has sanctioned a reconstruction of the Company or a scheme of arrangement of its affairs, or where for any other reason the Official Receiver satisfies the Board of Trade that the fees in the said Table B would be excessive, such reduction may be made in the said fees as may, on the application of the Board of Trade, be sanctioned by the Treasury.

3. The Companies (Board of Trade) Fees Order, 1927,(‡) is hereby revoked.

4. The fees mentioned in Table A shall be taken in stamps; the fees and percentages mentioned in Table B shall be taken in money.

5. (1) The documents to be stamped shall be as provided in Table A.

(2) The stamps shall be adhesive stamps over-printed with the words " Companies (Winding-Up)."

(3) The proper officer shall cancel every adhesive stamp by defacing it in indelible ink with a hand stamp bearing the word " Cancelled " and the date of cancelling.

6. Wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable.

7. This Order may be cited as the Companies (Board of Trade) Fees Order, 1929, and shall come into operation on the 1st day of November, 1929.

Dated the 11th day of October, 1929.

Sankey, C.

A. Barnes,
William Whiteley,
} Lords Commissioners of His Majesty's Treasury.

TABLE A.

	Fee. £	s.	d.	Document to be stamped.
1. On an application by a Committee of Inspection to the Board of Trade for a special Bank account	1	0	0	The application.
2. On an Order of the Board of Trade for a special Bank account	2	0	0	The order.
3. On an application by a Liquidator to an Official Receiver acting as a Committee of Inspection	0	10	0	The application.
4. On a bond with sureties ..	0	10	0	The bond.
5. On an affidavit other than proof of debt	0	2	6	The affidavit.
6. On an application to the Board of Trade— (*a*) Under section 15 of the Companies (Winding-up) Act, 1890, section 224 of the Companies (Consolidation) Act, 1908, or section 285 of the Companies Act, 1929, for payment of money out of the Companies Liquidation Account; or (*b*) after six months from the date of issue for the re-issue of a lapsed cheque, money order or payable order in respect of moneys standing to the credit of that Account:—				
Where the amount applied for does not exceed £1	0	1	0	The application.
Where the amount applied for exceeds £1 ..	0	2	6	The application.
7. (*a*) On an application to inspect liquidator's statement lodged with the Registrar of Companies under section 15 of the Companies (Winding-up) Act, 1890, section 224 of the Companies (Consolidation) Act, 1908, or section 284 of the Companies Act, 1929	0	1	0	The application.
(*b*) For a copy of, or extract from, such statement, each folio of 72 words or figures ..	0	0	4	The copy.
8. For the insertion in the *London Gazette* of a notice relating to a company which is being wound up by the Court ..	0	7	6	The notice.

TABLE B

I.—*On the audit of the Official Receiver's or liquidator's accounts by the Board of Trade, a fee according to the following scale on the amount brought to credit, including the produce of calls on contributories, but after deducting* (1) *the amount spent out of the money received in carrying on the business of the company, and* (2) *amounts paid by the Official Receiver or liquidator to secured creditors (other than debenture-holders)*:—

	Per cent.
On the first £5,000 or fraction thereof ..	1½
On the next £95,000 or fraction thereof ..	1
On the next £400,000 or fraction thereof ..	½
On the next £500,000 or fraction thereof ..	¼
Above £1,000,000	⅛

(*) 19-20 G. 5. c. 23. (†) 42-3 V. c. 58. (‡) S.R. & O. 1927 (No. 7) p. 193.

II.—*Where the Official Receiver acts as provisional liquidator only :—*

(*a*) Where no winding-up order is made upon the petition, or where a winding-up order is rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of creditors and contributories :—

Such amount as the Court may consider reasonable to be paid by the petitioner, or by the company as the Court may direct, in respect of the services of the Official Receiver as provisional liquidator.

(*b*) Where a winding-up order is made but the Official Receiver is not continued as liquidator after the statutory meetings of creditors and contributories :—

	£	s.	d.
(1) In respect of every 10 members, creditors and debtors, and every fraction of 10 up to 1,000	0	15	0
For every 10 or fraction of 10 above 1,000	0	7	6

Provided that where the net assets of the company, including uncalled capital, are estimated in the statement of affairs not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) On the value of the company's property as estimated in the statement of affairs, after deducting (in cases where a person other than the Official Receiver has, prior to, but not on the day of, the making of a winding-up order, been appointed Receiver for debenture-holders) the amount due to debenture-holders :—

	Per cent.
On the first £5,000 or fraction thereof	1½
On the next £20,000 or fraction thereof	¾
On the next £75,000 or fraction thereof	½
Above £100,000	¼

III.—*Where the Official Receiver acts as liquidator of the company and a Special Manager is appointed (to include the Official Receiver's services as provisional liquidator) :—*

Such amount as the Court, on the application of the Official Receiver, with the sanction of the Board of Trade, may consider reasonable.

IV.—*In all other cases where the Official Receiver acts as liquidator of the company (to include his services as provisional liquidator) :—*

	£	s.	d.
(1) In respect of every 10 members, creditors, and debtors, and every fraction of 10 ..	1	10	0

Provided that where the net assets of the company, including uncalled capital, do not exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) Upon the total assets, including produce of calls on contributories, realised or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under number V of this Table, and the amount spent out of the money received, in carrying on the business of the company :—

	Per cent.
On the first £1,000 or fraction thereof ..	6
On the next £1,500 or fraction thereof ..	5
On the next £2,500 or fraction thereof ..	4
On the next £5,000 or fraction thereof ..	3
On the next £90,000 or fraction thereof ..	2
Above £100,000	1

(3) On the amount distributed in dividend or paid to contributories, preferential creditors, and debenture-holders by the Official Receiver, half the above percentages.

V.—*Where the Official Receiver collects, calls or realises property for debenture-holders :—*

The same fees as under number IV (2) and (3) of this Table, to be paid out of the proceeds of such calls or property.

VI.—*Where the Official Receiver realises property for secured creditors other than debenture-holders :—*

The same fees as under number IV (2) of this Table, to be paid out of the proceeds of such property.

VII.—*Where the Official Receiver performs any special duties not provided for in the foregoing Tables :—*

Such amount as the Court, on the application of the Official Receiver, with the sanction of the Board of Trade, may consider reasonable.

VIII.—Travelling, keeping possession, law costs, and other reasonable expenses of the Official Receiver, the amount disbursed.

IX.—On every payment under section 15 of the Companies (Winding-up) Act, 1890, under section 224 of the Companies (Consolidation) Act, 1908, or under section 285 of the Companies Act, 1929, of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows :—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

Legal Notes and News.

Honours and Appointments.

The Vice-Chancellor of Oxford has appointed Mr. J. C. B. GAMLEN, M.A., solicitor, Baliol College, of the firm of Messrs. Morrell, Peel & Gamlen, St. Giles, Oxford, to act as Solicitor to that University in the place of Mr. J. D. Peel, M.A., Magdalen College, who resigned on the 1st October.

Mr. T. HOWARD DEIGHTON, solicitor, has been appointed by Mr. Alderman Sheriff Neal to succeed the late Mr. H. W. Capper as one of the Under-Sheriffs for the City of London. Mr. Howard Deighton is one of His Majesty's Lieutenants of the City of London, a member of the Court of Common Council, and is also a member of the London Court of Arbitration. He was admitted in 1887.

Mr. EDWARD WOOLL, Barrister-at-Law, has been appointed Recorder of Carlisle to fill the vacancy caused by the resignation of Mr. Ernest Page, K.C. Mr. Wooll was called to the Bar by the Inner Temple in 1903, and went the Northern Circuit. He also practised at the Liverpool, Cumberland, Carlisle, Preston and Wigan Sessions.

Mr. ALEXANDER P. HIGGINS, C.B.E., K.C., LL.D., Professor of International Law in the University of Cambridge, has been elected President of the Institute of International Law. Professor Higgins was called to the Bar in 1908 and took silk in 1923.

Mr. F. A. BRADLEY, Solicitor, Bury, has been appointed Clerk to the Bury and District Joint Hospital Board—of which the constituent authorities are Bury, Radcliffe, Ramsbottom, Whitefield, Tottington, and Little Lever—in succession to the late Mr. Fred Wilde, who had held the position since the formation of the Board, twenty-five years ago. Mr. Bradley is the son of Mr. Alderman F. Bradley, Bury, and was admitted in June last.

Mr. GEORGE EARNSHAW, Deputy Clerk to the Tynemouth Board of Guardians, has been appointed Public Assistance Officer to the Northumberland County Council.

The Lord Chancellor has appointed Mr. THOMAS ARTEMUS JONES, K.C. to be the Judge of County Courts on Circuit No. 29 (North Wales) in the place of His Honour Judge Roberts, deceased. Mr. Artemus Jones was called to the Bar by the Middle Temple in 1901, took silk in 1919, and was made a Bencher of his Inn in 1926.

Mr. HERBERT WILLIAM MALKIN, Barrister-at-Law, has been appointed Legal Adviser to the Foreign Office. Mr. Malkin was called by the Inner Temple in 1907.

Mr. GERALD W. HARDMAN, Solicitor, Broadstairs, has been appointed Clerk to the Walmer Urban District Council. Mr. Hardman was admitted in 1921.

Mr. JOHN HUTTON, Assistant Solicitor to the Port of London Authority, has been appointed Prosecuting Solicitor to the Manchester Corporation. Mr. Hutton, who was admitted in 1921, was formerly a member of the firm of Borough & Hutton and Deputy Coroner for the Northern Division of Somerset.

Mr. GAVIN TURNBULL SIMONDS, K.C., has been elected a Bencher of Lincoln's Inn, in the place of the late Judge Henry Yorke Stanger, K.C. Mr. Simonds was called to the Bar in 1906 and took silk in 1924.

Professional Announcements.

(2s. per line.)

Messrs. JENKINS, BAKER & CO., Solicitors, 3, London Wall Buildings, E.C.2, announce that owing to continued ill-health, Mr. W. H. Behrens, their senior partner, has retired from practice, and the partnership as from the 24th June last. The remaining partners, Mr. George B. Winsor and Mr. C. H. Sleigh, will continue to carry on the practice at the above address and at 489, London-road, Isleworth, as heretofore.

BARRISTERS' BEST FRIENDS.

"There is always a stigma in being a solicitor," stated a solicitor who was being cross-examined by Mr. Tom Eastham, K.C., in the King's Bench Division. "Don't say that," said Mr. Eastham, "the Bar regard solicitors as their best friends" (Laughter).

THE DILEMMA OF A SOLICITOR.

A Middlesbrough solicitor in a matrimonial case at South Bank, says *The Newcastle Evening World*, recently found himself in the awkward position of having been retained by both sides. The case was adjourned.

THE WISDOM OF EVE.

"It is always better to be silent and be thought a fool, than to open your mouth and remove all doubt," observed Mr. Justice Eve in the Chancery Division on Monday.

SOLICITOR DEFENDS SISTER.

Mr. R. A. Wilkinson, a Gainsborough solicitor, defended his sister, Miss Doreen Enid Wilkinson, at the Gainsborough Police Court recently on a charge of obstructing the highway with a motor car. Miss Wilkinson was fined 5s.—"a shilling for each minute of obstruction" says the *Grimsby Telegraph*.

MAYOR'S BAN ON SHORT SKIRTS.

The Mayor of Lynn (Mass.) has, says *The Sunday Times*, instructed the Police to take the names and addresses of all girls over twelve years of age whose legs are exposed from the ankle to above the knee.

ARE WE ALL CRIMINALS?

We are always legislating as if we were all criminals. We go abroad and have to take passports and file in front of an official, because one among a thousand people may be an escaped criminal.—*Sir Oliver Lodge.*

IS CARAVAN A HOUSE?

At Brighton County Court on Saturday last, the corporation claimed possession of a plot of land from Mrs. Charity Smith, a widow, aged seventy-nine. Mrs. Smith was wheeled into court in a bath chair. It was stated that the ground was formerly let by Mr. S. Holman to caravan dwellers and travelling showmen, and that Mrs. Smith had been there for a good many years. She paid ten shillings a week for her caravan to be on the land, which was near the tramway depot. In 1918, it was stated, the land came into the possession of the tramway department, and it was now required for extension of their premises.

Mr. F. H. Carpenter, for Mrs. Smith, argued that the caravan was a dwelling-house, and Mrs. Smith was therefore entitled to the protection of the Rent Restrictions Act.

His Honour Sir William Cann, however, said that it was not a permanent structure, and therefore he must make an order for possession.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE.	MR. JUSTICE ROMER.
M'nd'y Nov. 11	Mr. Andrews	Mr. Blaker	Mr. Ritchie	Mr. Blaker
Tuesday .. 12	Jolly	More	Blaker	*Jolly
Wednesday. 13	Hicks Beach	Ritchie	Jolly	Ritchie
Thursday . 14	Blaker	Andrews	Ritchie	*Blaker
Friday 15	More	Jolly	Blaker	Jolly
Saturday .. 16	Ritchie	Hicks Beach	Jolly	Ritchie

DATE.	MR. JUSTICE MAUGHAM.	MR. JUSTICE ASTBURY.	MR. JUSTICE CLAUSON.	MR. JUSTICE LUXMOORE.
M'nd'y Nov. 11	Mr. Jolly	Mr. Hicks Beach	Mr. More	Mr.*Andrews
Tuesday .. 12	*Ritchie	Andrews	*Hicks Beach	More
Wednesday. 13	*Blaker	More	*Andrews	*Hicks Beach
Thursday . 14	*Jolly	Hicks Beach	*More	Andrews
Friday 15	*Ritchie	Andrews	Hicks Beach	*More
Saturday .. 16	Blaker	More	Andrews	Hicks Beach

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The CHRISTMAS VACATION will commence on Tuesday, the 24th day of December 1929, and terminate on Monday, the 6th day of January, 1930, inclusive.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (31st October, 1929) 6%. Next London Stock Exchange Settlement Thursday, 21st November, 1929.

	MIDDLE PRICE 6th Nov.	INTEREST YIELD.	YIELD WITH REDEMPTION.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	82½	4 17 0	—
Consols 2½%	53	4 16 2	—
War Loan 5% 1929-47	99¾	5 0 3	—
War Loan 4½% 1925-45	93	4 16 9	5 2 9
War Loan 4% (Tax free) 1922-42	100	4 0 0	4 0 0
Funding 4% Loan 1960-1990	84½	4 14 8	4 15 9
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91	4 7 11	4 10 0
Conversion 4½% Loan 1940-44	95½	4 14 3	4 18 0
Conversion 3½% Loan 1961	73½	4 15 3	—
Local Loans 3% Stock 1912 or after	61½	4 17 7	—
Bank Stock	248	4 16 9	—
India 4½% 1950-55	85	5 5 11	5 12 3
India 3½%	86½	5 5 3	—
India 3%	56	5 7 2	—
Sudan 4½% 1939-73	92	4 17 9	4 19 0
Sudan 4% 1974	83	4 16 5	4 19 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years)	83	3 12 3	4 2 0
Colonial Securities.			
Canada 3% 1938	86½	3 9 4	4 17 6
Cape of Good Hope 4% 1916-36	93	4 6 0	5 4 0
Cape of Good Hope 3½% 1929-49	80	4 7 6	5 2 0
Commonwealth of Australia 5% 1945-75	96½	5 3 8	5 4 0
Gold Coast 4½% 1956	93	4 16 9	4 19 9
Jamaica 4½% 1941-71	92	4 17 10	4 19 0
Natal 4% 1937	91	4 7 11	5 11 3
New South Wales 4½% 1935-45	87	5 3 6	5 15 0
New South Wales 5% 1945-65	92	5 8 8	5 10 3
New Zealand 4½% 1945	93	4 16 9	5 3 9
New Zealand 5% 1946	101	4 19 0	4 18 0
Queensland 5% 1940-60	92	5 8 8	5 9 9
South Africa 5% 1945-75	102	4 18 0	4 17 9
South Australia 5% 1945-75	94	5 6 5	5 6 9
Tasmania 5% 1945-75	93	5 7 6	5 8 3
Victoria 5% 1945-75	94	5 6 5	5 6 9
West Australia 5% 1945-75	95	5 5 3	5 6 9
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	62	4 16 9	—
Birmingham 5% 1946-56	100	5 0 0	5 0 0
Cardiff 5% 1945-65	99	5 1 0	5 1 0
Croydon 3% 1940-60	68	4 8 3	5 2 0
Hull 3½% 1925-55	76	4 12 1	5 4 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	71	4 18 7	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	50	5 0 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62	4 16 9	—
Manchester 3% on or after 1941	61	4 18 4	—
Metropolitan Water Board 3% 'A' 1963-2003	60	5 0 0	—
Metropolitan Water Board 3% 'B' 1934-2003	63	4 15 3	—
Middlesex C. C. 3½% 1927-47	81	4 6 5	5 2 6
Newcastle 3½% Irredeemable	70	5 0 0	—
Nottingham 3% Irredeemable	60	5 0 0	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	99	5 1 0	5 1 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	79	5 1 3	—
Gt. Western Rly. 5% Rent Charge	97	5 3 1	—
Gt. Western Rly. 5% Preference	91	5 9 11	—
L. & N. E. Rly. 4% Debenture	74	5 8 1	—
L. & N. E. Rly. 4% 1st Guaranteed	71½	5 11 11	—
L. & N. E. Rly. 4% 1st Preference	64	6 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	77	5 3 11	—
L. Mid. & Scot. Rly. 4% Guaranteed	73	5 9 7	—
L. Mid. & Scot. Rly. 4% Preference	68	5 17 8	—
Southern Railway 4% Debenture	77	5 3 11	—
Southern Railway 5% Guaranteed	95	5 5 3	—
Southern Railway 5% Preference	85	5 17 8	—

SOLICITOR (38), desires post as assistant, Conveyancing and general practice. Good references. —Box 160, Solicitors' Journal, 29 Breams-buildings, E.C.4.

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SOLICITOR, Commissioner for Oaths (over 20 years' experience), practising on own account, desires conveyancing clerkship.—Write Box 54, Solicitors' Journal, 29 Breams-buildings, E.C.4.

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SOLICITOR, experienced in Conveyancing, is open to assist solicitors by post.—Box B. 331 Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG SOLICITOR desires Clerkship with a view to partnership. Experienced in litigation, workmen's compensation and company law; good advocate. Small capital at disposal. Excellent references, "C.," Box 558, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (Irish), aged 36, 14 years' experience, good worker, reliable, desires employment in or near London as Managing Clerk or otherwise. Excellent references. Salary by arrangement. Apply "T." Box 549, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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GENTLEMAN, accustomed to committee work and shorthand, with experience in reference work under the Rating and Valuation Act, will be free shortly; good worker; reasonable salary if some prospects.—Apply, in first instance, "R.," Box 55, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR'S Managing Clerk, unadmitted, wide experience litigation, conveyancing, common law; pleads fresh start any capacity, moderate salary; can furnish guarantee.—Lex, c/o W. W. Jemmett, F.I.S.A., Secretary, Central D.P.A. Society, Victory House, Leicester-square, W.C.2.

PRACTISING Solicitor would consider appointment as assistant where proper facilities would be given for the conduct of his own practice on terms. Experience mostly conveyancing and High Court litigation, some advocacy. London only.—Write "M.," Box 353, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, B.A., LL.B. (Camb.), available for locum work or to assist busy solicitor. South. Conveyancing, probate, trust, and general.—Box 95, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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SOLICITOR (46), School and University, with 10 years' experience in engineering (workshop and drawing office), 5 years under articles and 5 years in further experience and managerial work prior to his entry into the legal profession, and who has 16 years association with the law, and is at present on his own account in practice as a solicitor, desires a sound administrative appointment with an important undertaking; has a real live mind and is a capable organiser; thoroughly conversant with present-day methods of commercial life and efficient in legal procedure; highest references: principals only.—Box No. 1, Solicitors' Journal, 29, Breams-buildings, E.C.4

SOLICITOR (37), now in practice on own account, small connection, desires managing clerkship in London, with liberty to practise. Salary by arrangement.—"J.," Box 448, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor undertakes drafting accounts, looking up points, etc., for busy solicitors in return for small charge.—"E.," Box 275, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (2nd Class Honours), with over 30 years' continuous experience in conveyancing, trust and probate work, willing to assist Solicitors by post.—"S," Box 312, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

MAJOR, Regular Army, seeks suitable employment, Scholar of Eton and Merton, Oxford. Qualified London School of Economics. 7 years administrative staff. Good at all games and at accounts. 10697.

RETIRED Regular British Cavalry Officer, aged 33, unmarried. Educated Radley. Desires position of trust. Excellent references. Expert horseman with thorough knowledge breeding, etc. Drives car. Home or abroad. 9559.

RETIRED Regular Officer seeks position of trust; thoroughly experienced all branches clerical work. Three years farming South Africa. One year Private Secretary. Three and a-half years Clothing Manufacturers, S. Africa. Good organiser. Married, no family. Go anywhere. 11198.

GENTLEMAN, age 41, single, desires secretarial work. Highest personal references. 11199.

EX-CAPTAIN seeks post as attendant companion to invalid gentleman. Previous experience, excellent character, strongly recommended and well known references. Would travel if required. 8922.

EX-OFFICER, young, keen riding and country life, offers services as Companion to another with similar tastes, worker. 736.

PRACTICES AND PARTNERSHIPS.

LONDON Solicitors with good and old-established general practice require young and energetic Solicitor with view to early partnership. Applicant must be Public School man and under 35. University man preferred. Application by Solicitor with established practice considered.—Reply Box 652 c/o Street's, 8 Serle-street, W.C.2.

PARTNERSHIP.—Share in old-established firm in South Essex for disposal to capable and experienced solicitor (between 35 and 45), chiefly conveyancing and family business.—Particulars to Box 235, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR'S Practice.—Barrister, Oxford Graduate in Law, age 26, five years' experience in common law and chancery; reasonable capital and some connection; having decided to become a Solicitor desires to hear of an opening with a solicitor or firm of good standing with a view to partnership.—Communicate in strict confidence, Box 230, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR, practising W.C. district, would entertain partnership with the object of reducing his personal work and gradual retirement. References required and given.—"E.," Box 232, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, practising own account, desires to purchase established progressive Conveyancing and General Practice producing average net profit £1,000 per annum in London.—Box 124, Solicitors' Journal, 29 Breams-buildings, E.C.4.

ENERGETIC solicitor, good advocate, requires sound litigious, conveyancing and general practice, in Kent.—Reply "B.," Box 525, Solicitors' Journal, 29, Breams-buildings, E.C.4.

MR. NOAH A. RIGBY, Solicitor and Commissioner for oaths, St. Helens, Lancashire, is desirous of purchasing the succession to or a partnership in a substantial country practice and will be pleased to hear from any solicitor or firms of solicitors of good standing who are open to negotiation; capital available; excellent credentials; highest references given and required.

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Nos. 12-14, CAMBOR-STREET, No. 58, GOODRICH-ROAD, EAST DULWICH,
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on WEDNESDAY and THURSDAY, DECEMBER 4th and 5th, 1929, at 2.30 o'clock precisely each day.
Solicitors: Messrs. Collyer, Davis & Webb, 15, Serjeant's-inn, E.C.4.
Auctioneers' Offices: 63, Fenchurch-street, E.C.3; 172, East India Dock-road, E.14.
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THREE ACRES.
VACANT POSSESSION.

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Solicitor: G. J. ARMSTRONG, Esq., 24, Bedford-row, W.C.1.
Auction Particulars with Conditions of Sale and Orders to View may be obtained of the Auctioneers,
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CORNER FREEHOLD,
32, MADDOX STREET
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VALUABLE BUSINESS PREMISES
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Solicitors: Messrs. Ellis Piers & Co., 17, Albemarle street, W.1.
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Eight rooms, usual domestic offices, tennis lawn, kitchen garden, and two paddocks, which will be submitted to Auction on the Premises.
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Particulars and Order to View of Hurcombs, Calder House, Piccadilly, W.1.

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Saturday, November 9th, 1929.